United States Court of Appeals

for the Second Circuit

APPENDIX

75-7170

United States Court of Appeals

For the Second Circuit.

JOSEPH RODRIGUEZ,
Plaintiff-Appellee,

against

OLAF PEDERSEN'S REDERI A/S,
Defendant and Third-Party Plaintiff-Appellee,

against

AMERICAN STEVEDORES, INC., and
A. M. KRISTOPHER CO., INC.,
Third-Party Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK.

JOINT APPENDIX.

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UNITED STATES COURT OF APPEALS
FILED
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A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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UNITED STATES COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

- -X

JOSEPH RODRIGUEZ,

Plaintiff-Appellee,

against

OLAF PEDERSEN'S REDERI A/S,

Defendant and Third Party Plaintiff-Appellee,

against

AMERICAN STEVEDORES, INC., and
A. M. KRISTOPHER CO., INC.,

Third Party Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NEW YORK.

- -X

DOCKET ENTRIES.

68C 409 JOSEPH RODRIQUEZ vs. OLAF PEDERSEN's REDERI A/S

ROSLING,

DATE	FILINGS—PROCEEDINGS	AMOUNTS REPORTED OR MOLUMENT RETURNS
4-29-68	COMPLAINT FILED, SUMMONS ISSUED, JURY DEMAND ENDORSED UPON THE COMPLAINT.	1
6-11-68	ANSWER of deft filed. Affid of srv by mail on 6/10/68)	2
6-11-68	Deft's notice to take the deposition of pltff on 7/31/68 filed.	3
6-11-68	Deft's interrogatories to pltff filed.	4
6-12-68	THIRD PARTY COMPLAINT UPON AMERICAN STEVEDORES INC., filed. Third party summons issued.	5
6-12-68	THIRD PARTY COMPLAINT UPON A.M. KRISTOPHER COMPANY, Inc. filed. Third party summons issued.	6
6-25-68	Third party summons returned and filed. Third party deft A.M. Kristopher Company Inc. srvd on 6/18/68.	7
6-25-68	Third party summons returned and filed. Third party deft American Stevedores Inc, srvd on 6/18/68.	8
9-6-68	Pltff's interrogatories to deft filed.	9
9-13-68	Pltff's answers to deft's interrogatories filed.	10
11-1-68	ANSWER of third party deft A.M. KRISTOPHER CO., INC. filed. (affid of srv by mail on 10/30/68)	11
6-16-69	Interrogatories to 3rd Party AM KRISTOPHER filed by Pltff	12
6-17-69	Notice of taking Depositions of Deft OLAF PEDERSEN's on 6-4-69 filed by Pltff.	13
7-18-69	Pltff's interrogatories to deft A.M. Kristopher Co Inc and notice to tak the deposition of Olaf Pedersen's Rederi A/S on 8/26/69 filed.	14
7-24-69	Pltff's interrogatories to American Stevedores Inc filed.	15
10-11-69	Before ROSLING, J.- Case called & adjd to Nov 21, 1969 at 2:15PM for assignment to trial.	
10-20-69	Third party deft A.M. Kristopher Co. Inc is answers to interrogatories of pltff filed.	16
10-24-69	Deft. , third party plaintiff's answers to interrogatories filed.	17
11-21-69	Before Rosling,J. Case called & adjd to 1-9-70 at 2:15 P.M. for survey & assignment of trial	
1-9-70	Before ROSLING, J.- Case called - Marked ready for trial 3-9-70 at 10:00 A.M.	
1-15-70	Notice of motion filed pursuant to Rule 37(d) with memorandum striking the answer of the third party deft American Stevedores Inc., etc. (ret Jan 30,1970)	
1-30-70	Before ROSLING, J.- Pltff's motion to strike answer of 3rd party deft WITHDRAWN.	18

CITY CLERK

DOCKET ENTRIES

DOCKET JOSEPH RODRIQUEZ VS OLAF PEDERSEN'S REDERI A/S

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	REC. EM. H.
1-30-70	Third party deft American Stevedores Inc's ANSWERS TO Pltff's interrogatories filed.		19	
1-30-70	American Stevedores' cross-complaint against A.M. KRISTOPHER CO., Inc. filed.		20	
2-13-70	Answer and counter cross complaint of A.M. Kristopher Co. Inc. to cross-complaint of American Stevedores Inc filed.		21	
3-9-70	Before ROSLING, J.- Case called & adjd to Mar 16, 1970 at 10:00 A.M.			
3-16-70	Before ROSLING, J.- Case called - No appearances on behalf of Pltff & defts - Adjd to Mar 23, 1970 at 10:00 A.M.			
3-23-70	Before ROSLING, J.- Case called - Marked ready - Case to be called on a 24 hrs notice.			
3-23-70	Third party deft American Stevedores Answer to counter cross complaint with JURY DEMAND, FILED.		22	
3-24-70	Unsigned order filed, re: adjourning trial of this action.		23	
5-7-70	Motion for an order granting an immediate trial etc. (ret May , 1970)		24	
5/15/70	Before ROSLING, J. Case called. Motion withdrawn. Notice not to be given before September 18, 1970 for trial.			
5-21-70	Application for an immediate trial of this case or alternative relief etc. filed.		25	
5/25/70	Affidavit in Opposition to Plaintiff's Motion for Immediate Trial filed by Deft. and 3rd Party Pltff, OLAF PEDERSON'S REDERI A/S.		26	
6-5-70	Before ROSLING, J.- Hearing on motion for an immediate trial - Motion argued - (see memo on back of motion & affidavit paper #25)			
6-5-70	By ROSLING, J.- Memorandum filed. The within case presently set for survey and assignment on the calendar of 9-18-70 at 2:15 P.M. is continued ton said calendar, but will be preferentially on that day. (See memo endorsed on back of motion papers)			
9-18-70	Before ROSLING, J.- Case called - Marked ready 24 hrs not to after Oct 23, 1970			
12-21-70	Before ROSLING, J.- Case called - Marked ready on 24 hrs notice - Notice to be given after Jan 8, 1971.			
1-21-71	Before ROSLING, J.- Case called - Marked Ready- Subject.			

DEPUTY CLERK

DOCKET ENTRIES

drC-409 JOSEPH RODRIQUES VS OLAF PEDERSEN'S REDERI A/S

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
2-11-71	Before ROSLING, J.- Case called - Answered ready- TRIAL BEGUN Oral application, consented by all parties that a verdict of less than 12 jurors will be accepted by all parties - but not less than 10 jurors - Trial contined to 2-16-71 at 10:00 A.M.			
2-16-71	Before ROSLING, J.- Case called - Trial resumed - Trial cont'd to 2-17-71 at 10:00 A.M.			
2-17-71	Before ROSLING, J.- Case called - Trial resumed - Trial cont'd to 2-18-71 at 10:00 A.M.			
2-18-71	Before ROSLING, J.- Case called - Trial resumed - Trial cont'd to 2-22-71 at 10:00 A.M.			
2-22-71	Before ROSLING, J.- Case called - Trial resumed -Defts' motion to dismiss etc. - Motion denied - Trial cont'd to 2-23-71 at 10:00 A.M.			
2-23-71	Before ROSLING, J.- Case called - Trial resumed - Trial cont'd to 2-24-71 at 10:00 A.M. - Jury Marcia J. Miller to answer charges of contempt on Mar 5, 1971 at 10:00 A.M.			
2/24/71	Before Rosling, J.-Case Called Trial resumed-Deft. PEDERSEN rests-Deft. STEVEDORES rests-Deft. CHRISTOPHER rests-Application to the Court by Robt. Klonsky, Atty. for Pltff. to bring in a doctor for rebuttal-Application denied-Pltff. rests-All sides rest-Application by Wm. P. Kain, Jr., Atty. for Deft. PEDERSEN for the dismissal of the complaint & for a directed verdict in favor of Deft. PEDERSEN-Both applications denied-Joseph A. Cohen, Atty. for STEVEDORES, joined in the motion & Ferdinand Wolf, Atty. for Deft. CHRISTOPHER-Court denied motions-Robt. Klonsky, Atty. for Pltff. applies for directed verdict in favor of pltff.-Application denied-Trial cont'd to 2/25/71.			
2-25-71	Before ROSLING, J.- Case called - Trial resumed - Trial continued to 2-26-71 at 10:00 A.M.			
2-25-71	By ROSLING, J.- Order of sustenance filed.			
2-26-71	Before ROSLING, J.- Case called - Trial resumed - Jury returns a verdict in favor of pltff in the sum of $35,000.00-Jury polled- all motions reserved in the future - Court directed that no judgment be entered at this time - Jury to return on Mar 1, 1971 at 10:00 A.M. to try the claim over (between Shipowner and Stevedores)- Trial continued to Mar 1, 1971 at 10:00 A.M. (Jurors questionnaires attached)			27
	By ROSLING, J.- Order of sustenance filed.			27a

DEPUTY CLERK

DOCKET ENTRIES

09 CIVIL DOCKET JOSEPH RODRIQUES VS OLAF PEDERSEN'S REDERI A/S

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	A RECEIPT NO.
3-1-71	Before ROSLING, J.- Case called - Trial resumed - Claim and cross claim dismissed by all parties on oral application - Motion by atty for pltff to set aside jury verdict is denied. - Application by atty. for third party pltff on a claimover for a directed verdict in favor of Olaf Pedersen Rederi - Decision reserved - Motion for a directed verdict in favor of Pedersen (shipowner) - Denied - Motion for a directed verdict in favor of third party defts Stevedores - Denied- Order of sustenance signed - Jury rendered a verdict in favor of Stevedores for indemnity on claim over trial- All motions reserved for a period of 10 days. Jury discharged- Trial on indemnity (claim over concluded) -Court directed Clerk not to enter a judgment until further notice by the Court.			
3-1-71	By ROSLING, J.- Order of sustenance filed.		28	
3-11-71	Notice of motion and brief of deft & third party pltff filed for a directed verdict on its claim against third party deft American Stevedores, etc. Rule 50. (ret Mar 26, 1971)		29	30
3-24-71	Third party deft's brief filed in opposition to post trial motions.		31	
3-26-71	Before ROSLING, J.- Hearing on motion by third party pltff for a directed verdict etc. - Decision reserved.			
9/28/71	By Rosling, J.-Decision & Order of 9/24/71 denying motions for directed verdict & judgment notwithstanding verdict of jury, granting motion for new trial & setting case down for trial 10/8/71 at 2:15 P.M. constituting findings of fact conclusions of law filed.		32	
10-8-71	Before ROSLING, J.- Case called - adjd to 1-14-72 at 2:15PM			
10/21/71	Notice of motion with annexed memo of law for an order entering judgment as of 3/26/71, etc. ret. 10/22/71 filed.		33	
10-22-71	Before ROSLING, J.- Hearing on motion for entry of judgment - No appearance on behalf of pltff & deft. MARKED OFF.			
-71	Notice of motion filed for entry of judgment etc. (ret 11-12-71)		34	

(2 1)

DOCKET ENTRIES

68-C-409 JOSEPH RODRIGUES vs. OLAF PEDERSEN'S REDERI A/S

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT RECORDED ON ENROLLMENT/RETURNS
11-5-71	Notice of motion filed, for entry of judgment etc. (ret Nov 12, 1971)			35
11/12/71	Before Rosling, J.-Case Called for hearing on pltff's motion for entry of judgment nunc pro tunc-Motion granted on consent-Settle order			
12-27-71	Letter to Judge Rosling from Haight,Gardner,Poor & Havens, Esqs. dated 12-23-71 filed.			36
12-27-71	By ROSLING, J.- Order filed, that a judgment with interest be entered nunc pro tunc as of Feb 26, 1971. (P/C mailed to attys)			37
1-14-72	Before ROSLING, J.- Case called - adjd to Mar 3,1972 at 2:15 P.M.			
1-14-72	Bill of costs filed. Costs taxed in the sum of $160.75 against Olaf Pedersen's Rederi A/S.			38
1-27-72	JUDGMENT FILED. It is ordered that pltff Joseph Rodriguez have judgment against the dft Olaf Pedersen's Rederi A/S in the sum of $35,000.00 and that the judgment herein be entered nunc pro tunc, as of Fberuary 26, 1971. (P/C mailed to attys (J/C)			39
1-27-72	SATISFACTION OF JUDGMENT FILED. ($35,000.00)			40
/3/72	Before Rosling,J.-Case Called & adj'd to 5/5/72 at 2:15 PM for survey & assignment for trial			
5-5-72	Before ROSLING,J.-Case called-Adjd to 6-16-72 at 2:15 P.M.			
6-16-72	Before ROSLING,J.-Case called and adjd to 9-8-72 at 2:15 PM.			
6-27-72	Notice of motion filed, pursuant to Title 28 USC, Sec 753 (c) directing the Court reporters to transcribe and foward to attys copies of minutes of trial etc. (ret July 14, 1972)			41
6-30-72	Affidavit of Joseph Arthur Cohen filed.			42
7-3-72	By ROSLING, J.- Order dtd 6-30-72 ... that Olaf Pedersen's etc or their attys Haight,Gardner et al shall deposit with the Clerk on or before 7-12-72 the sum of $250.00 to the credit for disposition as thereinafter set forth etc. Notice of motion by deft & third party pltff, re: transcript of said minutes etc, is set down for 9-8-72 at 10:00 A.M. The clerk of the court shall cause copies of this order to show cause to be served on the attys for the respective parties and a copy to be delivered to the Marshal for the serice on Charlotte Cogen. (copy of above order mailed to attys as directed)			43
9-8-72	Before ROSLING, J.- Hearing re" stenographer's minutes - No appearances on behalf of pltff & deft - Hearing Marked Off.			

DEPUTY CLERK

DOCKET ENTRIES

...GUEZ v. OLAF, etc., & ANO.

	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
	Stenograph s transcript of 2/16/71 filed.			44
/72	Stenographe transcript of 2/17/71 filed.			45
/20/72	Stenographe s transcript of 2/18/71 filed.			46
11/20/72	Stenographer's transcript of 2/18/71 filed.			47
11/20/72	Stenographer's transcript of 2/22/71 filed.			48
11/20/72	Stenographer's transcript of 2/22/71 filed.			49
11/20/72	Stenographer's transcript of 2/23/71 filed.			50
11/20/72	Stenographer's transcript of 2/24/71 filed.			51
11/20/72	Stenographer'stranscript of 2/24/71 filed.			52
11/20/72	Stenographer's transcript of 2/25/71 filed.			53
11/20/72	Stenographer's transcript of 3/1/71 filed.			54
1/15/73	Notice of motion & memo of law ret for preference filed.			55/56
1/29/73	By Rosling,J.-Order (endorsed on reverse of paper #55) granting deft's motion for preference filed.			--
1/26/73	Before Rosling,J.-Case called-Preference granted			
3-26-73	Stenographer's trnascript of 2-26-73 filed			57
6-5-73	Before NEAHER, J. - Case called & adj'd to 6-27-73.			
9-26-73	Before NEAHER, J. - Case called & adj'd without date.			
10-12-73	Before NEAHER,J. Case called-pre-trial conference held & concluded. Trial adj'd without date.			
11/29/73	Notice of Motion , ret. 12/14/73 filed re: granting deft and third-party pltff summary judgment , etc.			--
11/29/73	Deft and third party pltff's Memorandum of Law in Support of its Motion for Summary Judgment filed.			58
2-7-74	Notice of motion ret. 2-22-74 for an order pursuant to Rule 60 (b) recalling portion of order of 6-21-71, etc. & memo of law in support of motion filed.			59
2-7-74	Statement pursuant to Rule 9 (g) in opposition to motion for summary judgment & memo of law on behalf of third party deft in opposition to motion for summary judgment filed.			60/61
2-21-74	Deft's memorandum of law filed.			65
12-30-74	Letter to J. Neaher from William P. Kain dtd 12-27-74 filed.			66
12-30-74	By NEAHER, J.-Memorandum and Order dtd 12-27-74 granting Pedersen's Motion for summary judgment and the form of judgment is to be settled by parties on notice filed. (p/c mailed to attys)			67

D. C. 110

DEPUTY CLERK

DOCKET ENTRIES

RODRIGUEZ vs. olaf pedersen

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
1-6-75	Letter dtd 12-19-74 to J. Neaher from William P. Kain filed.			68
1-6-75	Letter dtd 12-23-74 to J. Neaher from Joseph Arthur Cohen filed.			69
2/4/75	By NEAHER,J.- JUDGMENT dated 2/3/75 filed that deft and 3rd Party Pltf for summary judgment agaisnt third party deft American Stevedores, Inc granted, etc. XXXXX Deft and 3rd Party Pltff have judgment against 3rd party deft American Stev. Inc. in the amount of $37,094.60, etc. P.C. mailed to the attys.			
3-6-75	Notice of appeal filed. Duplicate mailed to C of A & attys. jn			70
				71

ATTEST
CLERK
BY DEPUTY CLERK

DEPUTY CLERK

EXCERPTS FROM TRANSCRIPT.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - x

RODRIGUEZ, :

Plaintiff, : 68-C-409

-against- :

OLAF PEDERSEN REDERI, et al. :

- - - - - - - - - - - - - - - - - - - x

United States Court House
Brooklyn, New York

February 16, 1971
2:00 P.M.

B e f o r e :

HONORABLE GEORGE ROSLING,

U.S.D.J.

MARGARET LARDNER
OFFICIAL COURT REPORTER

Appearances:

ROBERT KLONSKY, Esq.
Attorney for Plaintiff

WILLIAM P. KAIN, Jr., Esq.
Attorney for Olaf Pedersen Rederi

JOSEPH COHEN, Esq.
Attorney for American Stevedores

FERDINAND J. WOLF, Esq.
Attorney for Christopher Co.

1

THE COURT: All right. All attorneys are here on both sides.

Is there a problem with respect to the interrogatories that the Court must rule on or have the parties agreed?

MR. KAIN: I think there is, your Honor. I object to the interrogatories going in unless your Honor simultaneously instructs the jury that they are not binding on this defendant.

THE COURT: Whom are they binding on?

MR. KAIN: They were answered by Mr. Wolf, I believe, or at least his client, so they would be binding on Kristopher.

THE COURT: Well, they are not parties to this proceeding, so they are not binding on anybody.

Is there any other defendant who has a position to take?

There is no one.

Mr. Klonsky, what is your position? What procedure are you following in an attempt to introduce as admissions of this defendant statements made by other defendants in response to interrogatories?

2

The procedure I point out is different from that which involves depositions where the whole proceedings are notice to all parties and subject, of course, to the fact that there is a possibility that answers may be given, not for their competency, but because of the fact that they lead to competent evidence. The deposition can well be received in evidence regardless of whose deposition it is. It may come in either as a deposition of the defendant, that is, the ship owner, or of a witness.

Interrogatories are different. There are admissions made by the one who answers them, and, if a lawyer, in behalf of his client.

Now, what is the theory?

MR. KLONSKY: My theory, your Honor, is that these answers to interrogatories relate to fact not conclusions of law.

THE COURT: All right. They are excluded on that basis.

If a witness takes the stand, he may be confronted with what has been answered in interrogatories, if, upon a showing, it is demonstrated that the witness should be bound by

3

what appears in the interrogatories. The rest of it is too elementary.

I may be making an error but if it is it is an elementary error. I don't want any argument on the matter.

MR. KLONSKY: Exception.

THE COURT: Mark them for identification so we know what we are talking about.

THE CLERK: It will be marked Plaintiff's Exhibit 4 for identification.

(So marked.)

THE COURT: Those are the interrogatories of the AmericanStevedores and the answers to them.

MR. KLONSKY: No, your Honor. Kristopher.

THE COURT: All right. Interrogatories of Kristopher, and answers.

And there is no claim being made by the plaintiff here against Kristopher. That is, a direct claim. That Kristopher is contesting the plaintiff's claim, we may accept as established.

Shall we get the jury in, or is there further argument on anything

MR. KLONSKY: Nothing, your Honor.

THE COURT: All right, get the jury in.

4

MR.KLONSKY: Would your Honor sign this?

(Document handed to the Court.)

(Jury present.)

THE COURT: Who filled this out at 9:30?

MR. KLONSKY: 10.

THE COURT: 10.

MR. KLONSKY: My office.

THE COURT: Call your first witness, please.

MR. KLONSKY: He is being called in now.

THE COURT: Why don't you have your client seated at the counsel table.

MR. KLONSKY: I rarely do, your Honor.

THE COURT: All right, he can stay in the courtroom.

S A M U E L A L S T O N, having been called as a witness, is duly sworn by the Clerk of the Court and is examined and testifies as follows:

THECLERK: What is your full name?

THE WITNESS: Samuel Alston, A-l-s-t-o-n.

THE CLERK: Where do you live?

THE WITNESS: 498 Putnam Avenue, in Brooklyn.

MR. KLONSKY: How do you spell his last name?

5

Alston - direct

THE COURT: A-l-s-t-o-n.

DIRECT EXAMINATION

BY MR. KLONSKY:

Q Mr. Alston, by whom are you now employed?

A What is that?

Q By whom are you now employed? What do you do for a living?

A Oh, I am a longshoreman.

Q I see.

THE COURT: Put the lectern there where he can take a position behind it, please.

Otherwise you are going to be wandering around and eclipsing your adversary, which I am sure you don't want to do. Take your position behind that.

Q And who is your employer?

A Where I work for?

Q Now.

A Now?

Q Now.

THE COURT: Now.

A For Universal Stevedores.

Q Now, on July 3, 1967, by whom were you employed?

A American Stevedores.

Q American Stevedores Incorporated?

A Yes.

Q And how long have you been a longshoreman altogether?

A Oh, about fifteen years.

Q I see. On July 3, 1967, was the plaintiff Joseph Rodriguez a member of your gang?

A Pier 3.

Q He was a member of your gang?

A What?

Q He was a member of your gang?

A Yes.

Q At Pier 3?

A Yes.

Q What was your position in this gang?

A Holdman.

Q Holdman. And did you have another job or rating as a holdman?

A Header.

Q Header?

A Yes.

Q H-e-a-d-e-r-?

A Yes.

Q What is a header?

A How to tell the other guy how to store the freight on the side.

Q In other words, you are the boss down below; is that right?

A Yes.

Q Up on the deck, the hatch boss is the boss?

A Yes.

Q Is there a ship's foreman?

MR. KAIN: Your Honor, I prefer to have the witness testify rather than Mr. Klonsky.

THE COURT: Yes. You better ask the witness questions without leading him so closely and then after he gives his answer, you tell us what he said.

MR. KLONSKY: All right.

THE COURT: Because this witness is not talking distinctly enough for even the Court to understand him and I am only about three feet away from him.

THE WITNESS: I got a cold. I can't talk no louder.

THE COURT: Well, you can talk slower then.

THE WITNESS: All right.

THE COURT: Is there some water here? There

usually is.

BY MR. KLONSKY:

Q Now, who was the hatch boss of your gang on that day?

A Sam Nolley.

Q N-o-l-l-e-y?

A Right.

MR. KLONSKY: I will do the translating for you, if I can.

Q Now, let me ask you this: what time did you come to work that day?

A Eight o'clock.

THE COURT: What day?

MR. KLONSKY: The day of the accident, July 3, 1967.

THE COURT: You came at eight o'clock in the morning or at night?

THE WITNESS: In the morning.

Q What was the name of the ship?

A SUNNY PRINCE.

Q SUNNY PRINCE?

A Yes.

Q Was this the first day of your voyage on the SUNNY PRINCE or had you left the day before?

A That was the first day.

THE COURT: That was the first day that you worked?

THE WITNESS: Yes.

THE COURT: On the SUNNY PRINCE?

THE WITNESS: Yes.

THE COURT: That was July 3rd?

THE WITNESS: July 3rd.

THE COURT: Coming on the job at 8 a.m.?

THE WITNESS: Yes.

THE COURT: All right.

Q Now, Mr. Alston, how many members in this gang?

A How many in the gang?

Q Yes.

A Eighteen men in all.

Q In the whole gang?

A Eighteen men.

THE COURT: Eighteen men in the gang.

THE WITNESS: Yes, sir.

Q How many men were on the dock?

A There was six on the dock.

Q How many on deck?

A Three on deck.

Q How many in the hold?

A Eight in the hold.

Q And then there is a hatch boss?

A Hatch boss.

Q That makes the 18 men; right?

A Yes.

Q And when you came that morning on July 3, 1967, to which hatch were you directed?

A No. 2.

Q And do you know what you were there for?

A Yes; for discharging shrimp.

Q Shrimp?

A Yes.

Q What deck level was that?

A The deck?

Q What deck?

A The'tween --

THE COURT: The 'tween deck. That is t-w-e-e-n. It is an abbreviation for the between deck.

MR. KLONSKY: In between or between.

THE COURT: Well, at least the word 'tween has an apostrophe in front of it.

Q And when you were discharging the shrimp, did it come out of a reefer or refrigerated hatch?

A It came out of a reefer.

THE COURT: It came out of what?

THE WITNESS: It came out of a reefer or frozen --

THE COURT: It came from a frozen box?

THE WITNESS: Yes.

THE COURT: A locked up box in a reefer?

THE WITNESS: Yes, sir.

THE COURT: Which is also a refrigerator?

THE WITNESS: Yes, that's right.

Q You told us it was a 'tween deck?

A Yes.

Q Was this the upper 'tween deck?

A Yes.

Q What part of the hold; forward or aft?

A What part of the hold?

Q Yes. What part of the No. 2 upper 'tween deck was this reefer located from which you discharged shrimp?

A Aft end of the 'tween deck.

THE COURT: That would be toward the back?

THE WITNESS: Toward the back. Right in there.

Q So, if this is hatch No. 2 here (indicating) --

A Yes.

Q -- you would be working in this part of the

hatch, which is aft?

A Right.

Q And --

THE COURT: Aft. Where is Hatch 2?

MR. KLONSKY: Where I am pointing, your Honor. This is Hatch 2.

THE COURT: I see. All right. Okay. You better use a pointer because your finger --

MR. KLONSKY: Yes. I have it, your Honor.

Q That would be right here; correct?

A That's right.

Q Now, just aft of the No. 2 hatch, is there a bridge house?

A That is where the freezer part is, in there.

Q Is this called the bridge house (indicating)?

THE COURT: Now wait a second. I can't understand you.

What have you got there?

(Record read.)

THE COURT: Is that where the freezer part is?

THE WITNESS: Yes.

Q Is that aft of No. 2 Hatch?

A Yes.

Q Let's go a little more aft on the deck. Is

there a bridge house here (indicating)?

A A big hatch.

Q A bridge house where they have the wenches and the boom?

A Well, off -- in back of the ship part, where the ship crew and everything is, behind there.

Q This would be a house; correct?

A Yes.

Q And then just aft of the house is hatch No. 3; is that right?

A Yes, right.

MR. KAIN: Your Honor --

THE COURT: Yes?

MR. KAIN: Counsel is leading the witness. I know there is some difficulty here but I think it can be done a little more without leading.

THE COURT: Well, he is pointing to the --

MR. KAIN: The plan speaks for itself, your Honor.

THE COURT: It doesn't speak loud enough and the witness doesn't speak loud enough either, or clear enough.

What education have you had?

THE WITNESS: What

THE COURT: What schools did y- go to?

THE WITNESS: To the eighth grade.

THE COURT: Eighth grade?

THE WITNESS: Yes.

THE COURT: Well, then, slow down a little. Where was this school?

THE WITNESS: Public school in North Carolina.

THE COURT: Where?

THE WITNESS: North Carolina.

MR. KLONSKY: North Carolina.

THE COURT: All right. They speak English there.

Q When you went down into the hatch that morning at 8 a.m. --

THE COURT: Which hatch did you go down?

MR. KLONSKY: No. 2.

THE WITNESS: No. 2.

Q When you went down No. 2 hatch at 8 a.m. that morning, were the covers off or on?

A The covers -- we had put the cover on in the 'tween deck.

Q You put the cover on the 'tween deck?

A Yes.

THE COURT: I didn't hear what he said.

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THE WITNESS: We put the cover on the 'tween deck. We opened it up and we had to cover up the 'tween deck.

THE COURT: The 'tween deck?

THE WITNESS: Yes, in order to work, you got to cover.

THE COURT: Cover with what?

THE WITNESS: The hatch cover.

THE COURT: When you got on the job, was the 'tween deck hatch covered or uncovered?

THE WITNESS: It was not covered.

THE COURT: You were going to work on top, above the place where you put this cover?

THE WITNESS: Yes.

THE COURT: Go ahead.

BY MR. KLONSKY:

Q Was the main deck covers on or off when you came to work?

A Did you move them off, did you say?

Q Were they on or off?

A They were off.

THE COURT: In other words, the main deck -- that is, the top deck covers, the hatch cover of No. 2 was off?

THE WITNESS: It was off.

THE COURT: The big space was open?

THE WITNESS: That's right.

THE COURT: And also you said the 'tween deck was open also?

THE WITNESS: We had to cover the 'tween deck.

THE COURT: Never mind what you had to do. That was open also when you got on the job?

THE WITNESS: Yes.

THE COURT: Then you say you had to cover the 'tween deck with the hatch cover, but you left --

THE WITNESS: The top deck open.

THE COURT: The top deck open?

THE WITNESS: Yes.

Q How did you get from the main deck down to the 'tween deck?

A We got a ladder down the side of the ship.

Q Is this ladder in the square of the hatch?

A Right from the edge to the back ofthe ship, there is a ladder going right down the side of the ship, like this (indicating).

THE COURT: There is a ladder down the side of the ship leading into what

THE WITNESS: The 'tween deck.

THE COURT: The 'tween deck, which you had covered?

THE WITNESS: Yes.

THE COURT: You didn't cover it. Somebody did?

THE WITNESS: Yes. We covered the 'tween deck.

THE COURT: You covered it yourself?

THE WITNESS: Yes.

THE COURT: Your own gang?

THE WITNESS: Yes.

THE COURT: The 18-man gang?

THE WITNESS: Yes, sir.

THE COURT: Those who were working there?

THE WITNESS: Yes.

BY MR. KLONSKY:

Q Now, this ladder that you talk about, could you get to the ladder if the hatch covers were on in the main deck?

A You come down a ladder and cover it up --

Q No, no. If the hatch covers in the main deck were on, on --

A On.

Q -- on the beams, couldyou get to this ladder or do you have to take the hatch covers off?

A Well, it was on the top deck up there.

Q Yes?

A You had to take the hatch cover off.

Q In other words, in order to get to the ladder --

A The hatch covers come off.

Q When the covers were off on the top, you could look down and see the 'tween deck; is that right?

A Yes.

Q And this 'tween deck had its own hatch covers and beam?

A I t didn't have no hatch cover.

Q But you put them on?

A Yes.

Q You used winches and booms?

A Yes.

Q Did youcover the entire deck?

A Cover half way.

THE COURT: You covered half of the 'tween deck?

THE WITNESS: Right.

THE COURT: You didn't cover all of the 'tween deck?

THE WITNESS: Right.

Q Which half did you cover?

A The aft end.

THE COURT: In other words, the half that was towards the back of the ship?

THE WITNESS: Yes.

THE COURT: You covered over half of the No. 2. 'tween deck?

THE WITNESS: Yes.

THE COURT: And left the other half open?

THE WITNESS: Yes.

THE COURT: Just one question in order to make clear some testimony or words the witness has used before, or you used them.

What is the square of a hatch?

THE WITNESS: The largest --

THE COURT: What is it?

THE WITNESS: It means you go down the center, and back in the wings would be in the sun.

MR. KLONSKY: The square is where the sun is, all the way up.

THE COURT: In other words, the hatch covers go over and close up --

THE WITNESS: Close it up.

THE COURT: -- the square of the hatch?

THE WITNESS: Yes.

THE COURT: Or half --

THE WITNESS: They close over the whole square of the hatch.

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THE COURT: Yes. But you only covered half the square of the hatch?

THE WITNESS: So that the ship cleaner could go down there and clean up the bottom of the deck.

THE COURT: That is why you didn't cover the whole of the 'tween deck. You only covered the back, the aft part?

THE WITNESS: The 'tween deck, and put a safety net across so that you could walk down to the bottom.

THE COURT: You put a safety net across the open part?

THE WITNESS: Yes.

THE COURT: That means if things fall down, they wouldn't go through and hit somebody?

THE WITNESS: (Unintelligible.)

THE COURT: Strike that out. The jury will disregard whatever part they heard.

Counsel will proceed with the examination.

Let me point out that this witness may be getting something on the record -- and this is a good reporter -- which is not necessarily what the witness says. But I can assure you that the jury hears no part of it. I can't understand him most

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of the time.

MR. KLONSKY: All right.

THE COURT: You better make your questions shorter, if you can.

Q Mr. Alston --

A Yes.

Q Until what time didyou work removing the shrimp?

A Removing?

Q What time did you finish removing the shrimp?

A Eleven.

Q Eleven at night?

THE COURT: Eleven at night or in the morning?

THE WITNESS: In the morning.

THE COURT: The day of the accident?

THE WITNESS: Yes, the day of the accident.

Q In the movement of the ship, did the longshoremen use any equipment?

A No. You can't use the hook on theshrimp because you have got carton boxes.

THE COURT: You have to do what

MR. KLONSKY: You can't use a hook --

THE COURT: Please.

THE WITNESS: You have to use your hands on it, no hooks.

THE COURT: In other words, you handle the cases of shrimp with your hands?

THE WITNESS: Right.

THE COURT: Not with a baling hook?

THE WITNESS: Not with a hook, right.

Q Do you wear gloves to do that?

A There's a lot of men don't want to wet the gloves up on the shrimp.

THE COURT: Will you read that back?

(Record read.)

THE WITNESS: The shrimp is wet. They --

THE COURT: Yes?

THE WITNESS: They take the gloves off.

THE COURT: Off?

THE WITNESS: And hook them up inside of the ship.

THE COURT: They hang them on the side of the ship?

THE WITNESS: Yes.

BY MR. KLONSKY:

Q Now, when you were finished taking out the shrimp, where did the men go?

A Went to the No. 4 hatch, right, that's right.

Q Right there (indicating)?

A Yes.

THE COURT: That is further back?

THE WITNESS: Further back, yes.

Q That is on the aft end of the mid-ship house here; isn't that right?

A Yes.

Q And what was it that you were going to do in No..4 hatch?

A Going to take off cowhides.

Q Cowhides?

THE COURT: Cowhides?

THE WITNESS: Hides.

Q From what level of the No. 4 hatch were the cowhides to come out?

A Down in the bottom.

Q The lower hold?

A Yes.

THE COURT: That is the lowest hold on the ship?

THE WITNESS: Yes.

Q And what were your hours of work for that day, starting at 8?

A Stopping at 5 o'clock.

Q 8 to 5 o'clock. Now, did you go to the No. 4

hatch before lunch or after lunch?

A When we got back, the time the whistle blow, no sooner had the whistle blow, we come back up.

Q To No. 4?

A Yes.

Q My question is this: when you left No. 2 to go to No. 4 before you went to lunch, did you do anything in the No. 4 hatch?

A No.

Q Did you uncover it or was it uncovered?

A The whistle blowed at the time we got in the hatch.

THE COURT: But you didn't answer the question. He said when you got to Hatch No. 4, was the hatch cover on No. 4 or was it off No. 4?

THE WITNESS: It was on No. 4 and we had to uncover 4 to go down.

THE COURT: Did you uncover it?

THE WITNESS: No.

THE COURT: In other words, when you came there, it was covered?

THE WITNESS: Covered.

THE COURT: And the whistle blew before you could uncover it?

THE WITNESS: Yes.

THE COURT: All right.

BY MR. KLONSKY:

Q And after lunch, did you come back to No 4?

A Yes.

Q And did you then uncover No 4?

A We started to uncover it then, uncover to go down.

Q I see.

THE COURT: But who uncovered it?

THE WITNESS: Eight of us down in the hold.

THE COURT: Who?

THE WITNESS: Me and seven more men.

THE COURT: After you came back from lunch?

THE WITNESS: Yes.

THE COURT: You uncovered it?

THE WITNESS: Yes, uncovered it.

THE COURT: That is, Hatch No 4?

THE WITNESS: No. 4.

THE COURT: All right.

BY MR. KLONSKY:

Q And then did you go down?

A Went down.

Q And did you see the plaintiff there?

A What?

Q Did you see Mr. Rodriguez there?

A Yes.

Q Did he speak to you?

A Yes.

MR. KAIN: Your Honor, I am going to object to this line of testimony as leading. I know the witness has difficulty but I think perhaps if we ask him to speak slower, we might understand him.

THE COURT: I don't know.

Q What did he say to you? What did you say to him?

A He told me: I left my hook and gloves up in the other hatch. I am going to get them down in the bottom hold.

THE COURT: Just a second. You say you spoke to Mr. Rodriguez?

THE WITNESS: Yes.

THE COURT: Where was he when you spoke to him?

THE WITNESS: He was coming down the ladder.

THE COURT: Where was the ladder?

THE WITNESS: Down in the ship.

THE COURT: Were you on the ladder upstairs or --

THE WITNESS: No. In the bottom, on the floor down in the hold where we were going to go up.

THE COURT: On the floor?

THE WITNESS: The next deck down from the top.

THE COURT: And you were going to remove the hatch cover of that --

THE WITNESS: Yes.

THE COURT: -- of that bottom hold?

THE WITNESS: Yes.

THE COURT: No. 4?

THE WITNESS: Yes.

THE COURT: That is where you spoke to him?

THE WITNESS: Yes.

THE COURT: What did he say to you? What did you say to him?

THE WITNESS: He told me: "I left my gloves and hook over in the next hatch" --

THE COURT: Gloves and hook?

THE WITNESS: Yes.

"-- hanging up over there."

I told him: "You go get them and by the time we go downbelow" --

THE COURT: The witness says: "I told him 'You go get them and by the time we go down below'" --

THE WITNESS: "--we'll open up and get started, by the time we get down in the hold."

THE COURT: You said that he should do it or you do it?

THE WITNESS: We do it, we.

Q Now, at the time he spoke to you and you spoke to him, was it in the 'tween deck or the lower hold?

A No, in the 'tween deck. We didn't go down in the lower hold.

Q Was the 'tween deck of No. 4 the same height or lower than the 'tween deck of No. 2?

A I couldn't tell you exactly.

Q How many 'tween decks --

A Some of them are deeper, some of them are not.

Q How many 'tween decks were there in No. 2?

A No. 1 --

THE COURT: There was a deep hold --

THE WITNESS: Yes, all the way down.

THE COURT: At No. 2?

THE WITNESS: Yes.

THE COURT: Was there a 'tween deck at No. 2?

THE WITNESS: Yes.

Q There was a 'tween deck at No. 2?

A Yes.

Q How many 'tween decks?

A I think there's two.

Q Two?

A A 'tween deck and a deck in between.

Q Two 'tween decks in No. 2?

A Yes.

Q How many 'tween decks are there in No. 4?

A One.

Q Only one?

A Right.

Q So, were the 'tween decks of No. 2 lower or higher than the 'tween decks of No. 4?

A I couldn't tell you.

MR. KAIN: I object. He already said he did not know.

THE COURT: Just a minute.

MR. KAIN: The witness already answered he did not know.

THE COURT: All right.

BY MR. KLONSKY:

Q Now, sir, after Mr. Rodriguez went away to get his hook and gloves, when didyou next see him?

A When did I next see him?

Q Yes.

A About six months later.

Q He didn't come back to No. 4 to work?

A No.

Q Did you find out -- or did you go to No. 4 hatch at all to see him?

A No. Somebody told me, the hatch boss --

MR. KAIN: Objection.

THE COURT: You were asked did you go to No. 4 hatch to see him, to see Mr. Rodriguez?

THE WITNESS: No. 4 hatch to see him?

THE COURT: Is that your question?

MR. KLONSKY: I'm sorry. I mean No. 2.

THE COURT: All right.

Did you go to No. 2 hatch to see him?

THE WITNESS: No, I did not.

MR. KLONSKY: Your witness.

THE COURT: You may cross-examine.

CROSS-EXAMINATION

BY MR. KAIN:

Q If you don't understand me, Mr. Alston, I will be glad to repeat my questions to you.

A Okay.

Q This morning that you came down to go to work on board the SUNNY PRINCE --

A Yes.

Q -- were you in your regular gang, the gang

you always worked with?

A Yes.

Q And was Mr. Rodriguez --

THE COURT: Was that answered?

THE WITNESS: Yes.

MR. KAIN: He shook his head, your Honor.

THE COURT: Just answer so I can hear you.

Q Was Mr. Rodriguez a member, a regular member of your gang?

A Yes, he was.

Q How long had he been a member of your gang?

A I couldn't tell you exactly.

THE COURT: Approximately?

THE WITNESS: I'd say probably around eight months or more.

Q Now, I think you told Mr. Klonsky that you got there at about eight o'clock in the morning.

A At the time we went to work.

Q That is the time you went to work?

A Yes.

Q When you got there at 8 o'clock in the morning, you, as you sit there now, do you remember that day?

A Do I remember?

Q Yes.

A Yes.

Q Yes. Do you remember the day?

A Yes.

Q Can you sort of close your eyes and remember what happened that day?

A Well, what do you mean? When we went to work?

Q As you sit there, can you remember what happened that day?

A We went to work, yes.

Q On July 3, 1967 --

A Yes, July 3rd.

Q -- what was the weather that morning when you got there?

A Well, it was really raining.

THE COURT: Drizzling, raining?

THE WITNESS: Drizzling, raining; not too hard.

Q Did you stand by, you or any other longshoremen, standby and not work till the rain stopped?

A We stand by fifteen or twenty minutes. We held up and go back to work.

THE COURT: In other words, you held up your men in the gang for fifteen or twenty minutes?

THE WITNESS: Maybe so. I said --

THE COURT: Maybe?

THE WITNESS: Maybe.

THE COURT: And that was because of the rain?

THE WITNESS: Yes, because of the rain.

BY MR. KAIN:

Q Could that have been from about 8 in the morning until about 8:25 that morning?

A I couldn't tell you.

Q Did youtell us just a minute ago that when you came on board and went to No. 2 hatch, the hatch was opened?

A Down below, yes.

Q Was it open at the main deck level?

A The main deck?

Q Up on the main deck?

A I didn't remember --

THE COURT: When you first came on the job --

THE WITNESS: I don't remember whether the main deck was open or not.

Q Didn't you tell us a minute ago that when you came on the job, it was already open?

A Open all the way down below.

THE COURT: He is asking only about the main deck. Were there hatch covers on or off at Hatch No. 2 at eight o'clock in the morning when you came on the job?

THE WITNESS: You are talking about the top?

THE COURT: Yes.

THE WITNESS: We had to uncover that.

THE COURT: You had to uncover that?

THE WITNESS: Yes.

THE COURT: So, when you came on the job --

THE WITNESS: Yes?

THE COURT: -- they were covered?

THE WITNESS: Yes.

BY MR. KAIN:

Q Didn't you just a minute ago tell Mr. Klonsky that when you came on the job, it was already open on top?

A Not on top.

Q What time --

MR. KAIN: I'll withdraw the question.

Q How many gangs of longshoremen came on board that ship that morning at eight o'clock, do you remember?

A On that ship?

Q On that ship.

A Only one.

THE COURT: Was there any other gang? Just your gang?

THE WITNESS: Just my gang.

Q Just one gang?

A One gang.

Q While you were working that day, did you work at any hatches -- whenI say "you," I mean your gang -- did your gang work at any hatches other than No. 2 and No. 4?

A I don't remember.

Q When you got to No. 2 hatch, I think you said that -- Is that the first hatch you went to that morning?

A Yes.

Q You're sure of that?

A Yes.

Q When you got there, were there cleaners working in that hatch?

A Were there what?

Q Cleaners working in No. 2 hatch when you got there?

A I don't know whether they were there or come after we got there.

Q Is it your testimony that you took the covering off the top of No. 2 hatch that morning?

A Yes. We uncovered it because it was really raining that morning.

THE COURT: Your gang uncovered the main hatch cover of Hatch No. ?

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THE WITNESS: Yes.

Q Do you remember was there a tarpaulin on the top of this hatch, a piece of canvas over the hatch boards?

A Do I remember what?

Q Was there a piece of canvas on top over the hatch boards?

A Yes.

THE COURT: That is, the hatch of No. 2?

THE WITNESS: Yes. That is to keep the water from going through.

THE COURT: What?

THE WITNESS: That is to keep the water from going through the hatch.

THE COURT: Which hatch?

THE WITNESS: No. 2.

Q So the men in your gang took the piece of canvas off? Did you?

A Yes.

Q Where did you put that?

Put it offshore.

THE COURT: You mean on the boat on the offshore side?

THE WITNESS: The offshore side.

THE COURT: Of the main deck?

THE WITNESS: Right.

Q Do you remember which side was the offshore side, whether it was the port or the starboard side?

A Well, the ship is on this -- it has got to be off there (indicating).

Q What side of the ship was it, the starboard side or the port side.

A The off side.

Q The starboard side?

THE COURT: No. He is saying "off side."

THE WITNESS: The port side.

THE COURT: The port side?

THE WITNESS: That is the side the ship was on, the north side.

THE COURT: Do you look straight ahead?

THE WITNESS: Yes.

THE COURT: Was that the front of the ship?

THE WITNESS: This is the ship over there. This is the ship (indicating).

THE COURT: You may continue.

Q Now, Mr. Alston, if you stood on the ship, the SUNNY PRINCE, on July 3, 1967, the day you say you were working with Mr. Rodriguez, was the pier to your right or to your left as you face forward on the ship; do you remember

A The pier -- face forward on the ship.

Q If you are looking on the bow of the ship --

A I was facing forward. If I am standing on the ship facing forward the ship would be on the left.

MR. KLONSKY: That is port side.

Q If I understand you correctly, you put this piece of canvas -- when I say "you," I mean the men in your gang -- you put it on the offshore side, the side away from the pier?

A Yes, sir.

Q This is on the main deck; was it?

A Yes.

Q The top deck?

A The top deck.

Q Then what did the men in your gang do to open up this hatch?

A We what?

Q What did the men in your gang then do in opening up this hatch after you took the canvas off?

A We went down the 'tween deck and covered it up.

Q Did you take anything else off before you went down to the 'tween deck?

A I don't remember.

THE COURT: You first took off the tarpaulin

right?

THE WITNESS: Yes.

THE COURT: The cloth?

THE WITNESS: Yes.

THE COURT: And put that on the port side of this ship?

MR. KLONSKY: No. The starboard side is the offshore side.

THE WITNESS: Offshore.

THE COURT: Well, I thought you testified that it was port.

THE WITNESS: Yes.

THE COURT: At all events, you put it on the offshore side?

THE WITNESS: Right.

THE COURT: The tarpaulin is off hatch No. 2?

THE WITNESS: Yes.

THE COURT: What did you find underneath the tarpaulin?

THE WITNESS: I didn't ask down in the bottom of the ship.

THE COURT: You took thetarpaulin off. What is right underneath it?

40 Alston - cross

THE WITNESS: The hatch cover has got to be on there.

THE COURT: Was the hatch cover underneath the tarpaulin?

THE WITNESS: Yes.

THE COURT: Did you remove the hatch cover or did you leave it?

THE WITNESS: You have to remove them to go down.

THE COURT: Suppose you tell us what the hatch cover is made of?

THE WITNESS: Wood.

THE COURT: But how big are the pieces?

THE WITNESS: They are about four -- six feet long and about that wide (indicating).

THE COURT: Indicating --

THE WITNESS: Two.

THE COURT: Two feet wide.

THE WITNESS: Made out of two boulders this wide, about six feet long.

THE COURT: How long is six feet? Can you point out in the courtroom here?

THE WITNESS: Longer than I am tall.

THE COURT: How tall are you?

THE WITNESS: I am five eleven.

THE COURT: All right, that is one inch longer.

Q Did the men in your gang -- after you took off the hatch boards, did you take out the hatch beam?

A No. They didn't take no beams out.

Q You left the hatch beam in?

A Down below.

Q On the top deck?

A On the top deck, you have to take it off -- off the end to go down.

THE COURT: Did you take the beam out?

THE WITNESS: Off the aft end.

THE COURT: You took the board off?

THE WITNESS: And the beams and go down.

THE COURT: And the beams are what the boards are resting on?

MR. KLONSKY: He also said: "Off the after end," your Honor.

THE WITNESS: Off the after end.

Q Youtook off the boards. You took off the beam. Did you open up the whole square of the hatch?

When I say 'you," I mean the men in your gang.

A We opened up the whole square.

Q On the top or the main deck?

A Yes.

Q Before you got to No. 2 Hatch, were you told what cargo you would discharge at No. 2?

A I don't remember that.

Q Do you know whether there was any cargo in No. 2 hatch other than the shrimp you referred to?

A The hatch boss knew but we didn't.

THE COURT: "The hatch boss knew but we didn't."

Q And you told us, I believe, or you told Mr. Klonsky, that this shrimp was all in the after part of what you described as the upper 'tween deck?

A Yes.

Q At No. 2 hatch?

A Yes.

Q Could you tell me was it all in one reefer box?

A I couldn't tell you. I don't remember, no.

Q Was the cargo that you discharged --

MR. KAIN: I'll withdraw that question.

Q Could you tell me how big one of these cartons of shrimp was? Do you remember thesize?

A What? The shrimp, the cases of shrimp?

THE COURT: Yes.

A They weighed about fifty pounds, about that square (indicating).

THE COURT: Indicating -- how long, how wide, how high was each case? Show withyour hands.

THE WITNESS: About like that, about that wide.

THE COURT: That is how wide

THE WITNESS: Yes.

THE COURT: About eighteen inches.

THE WITNESS: About that.

THE COURT: How long?

THE WITNESS: About that tall, indicating. It weighed about fifty pounds.

THE COURT: Two feet.

What was the other dimension?

THE WITNESS: The thickness -- it was as thick as it was wide.

THE COURT: It looks as though a foot by eighteen inches by two feet and weighed fifty pounds, and my estimate of how this witness gestured is very, very approximate.

MR. KLONSKY: He said eighteen inches by two feet by one foot.

THE COURT: Two feet high, eighteen inches

long, and about a foot wide. He said it was not as wide as it was long; is that right?

THE WITNESS: No. It was not square.

THE COURT: It was not square?

THE WITNESS: No. It was this long and about that thick (indicating).

THE COURT: All right.

Q Do you know how many packages of shrimp there were in each of these cartons?

A I don't know.

Q What time did you start to discharge the shrimp; what time of the day?

A Well, nobody come to finger --

THE COURT: Strike that out. The jury will disregard that.

If the witness would answer the question we would get along better.

The witness, I would judge, gives about three-quarters of unintelligible responses and the other one-fourth is intelligible.

MR. KAIN: May we have the question repeated?

THE COURT: Read the question slowly and we will get an answer from the witness.

(Record read.)

THE COURT: What time did you start to discharge the shrimp?

THE WITNESS: About nine o'clock, around nine o'clock.

THE COURT: Around nine o'clock in the morning?

THE WITNESS: Yes.

THE COURT: Right?

THE WITNESS: Yes.

BY MR. KAIN:

Q Could ithave been nine fifteen in the morning?

A It could have been. I don't say exactly what time.

Q How many longshoremen worked with you in this 'tween deck discharging the shrimp?

THE COURT: How many; one, two, three, four, five, six? Give a number only.

THE WITNESS: Ten.

Q All hold men?

A Hold men and two dock men.

Q And two dock men?

A Yes.

THE COURT: Two dock men were in the 'tween deck?

THE WITNESS: Yes.

THE COURT: Helping you discharge the shrimp; is that right?

THE WITNESS: That's right.

THE COURT: All right.

Q If you know, were the dock men also employees of American Stevedore?

A Were the offshore --

Q I say, if you know, were the dock men who were working in the hold with you during the discharge of this shrimp, were they also employees of American Stevedores?

A Yes.

THE COURT: They were part of your gang; weren't they?

THE WITNESS: Yes.

THE COURT: And your whole gang worked for American Stevedores?

THE WITNESS: Yes; that's right.

BY MR. KAIN:

Q While you were discharging shrimp, did you discharge it just from the one reefer box?

A I don't remember now whether it was one or two.

MR. KLONSKY: Did he say if we had one or two?

THE WITNESS: I said I don't remember whether we had one or two.

MR. KLONSKY: You don't remember.

Q Could you tell me how the longshoremen got the shrimp out of the 'tween deck? How did you take it out of the'tween deck and put it over onto the pier?

A You have got a boom --

THE COURT: A boom?

THE WITNESS: Yes, a boom.

THE COURT: And how was it hoisted up?

THE WITNESS: On pallets. You hook it on the pallets and take it right up.

THE COURT: All right.

Shall we agree on the definition of pallets?

Pallets are like stretchers --

MR. KLONSKY: Wooden slats, yes.

THE COURT: Except they are wood.

THE WITNESS: Yes, wood.

MR. KAIN: There's more than one kind, your Honor.

THE COURT And the cargo, the shrimp, is put on the pallets?

THE WITNESS: Loaded on the pallets.

THE COURT: And the pallets are hoisted up by the boom?

THE WITNESS: Yes.

THE COURT: That has a fall running down from it to the pallet?

THE WITNESS: Yes.

THE COURT: All right.

BY MR. KAIN:

Q Did you use spreader bars in a bridle to hook onto these pallets?

A Yes, yes.

Q And a spreader bar is just a piece of steel bar or pipe that goes in under each pallet?

A That's right.

Q That is what you use to lift them up with?

A Yes.

Q What time of day did you finish the discharge?

A Well, --

THE COURT: Of shrimp.

THE WITNESS: I don't know exactly, but a little after eleven o'clock.

THE COURT: Eleven o'clock in the morning?

THE WITNESS: After eleven o'clock, yes.

Q You're not sure of the time though; are you? I say, you're not sure of the time you stopped discharging the shrimp?

A No.

Q Might it have been ten fifty, ten minutes of eleven?

MR. KLONSKY: Your Honor, I object to this. He says about eleven. Now he asks him: "About ten fifty?"

THE COURT: Counselor, we have got too much trouble with this witness.

MR. KLONSKY: I don't know why he has to ask that question.

THE COURT: Do you have an objection?

MR. KLONSKY: Yes.

THE COURT: Overruled.

Read back a couple of questions and answers.

(Record read.)

THE COURT: Might it have been ten to eleven?

THE WITNESS: Ten to eleven? It was after eleven.

THE COURT: It was after eleven?

THE WITNESS: Yes.

THE COURT: Not before?

THE WITNESS: Not before, no.

Q What pier in Brooklyn were you working at; do

you remember?

A Pier 3.

Q Was that a Grancolumbiana pier?

A A what?

Q Did Grancolumbiana bring its ship into that pier?

A Port Authority.

THE COURT: Do you know what "Grancolumbiana" means?

THE WITNESS: No, no. Port Authority.

THE COURT: What about the Port Authority?

THE WITNESS: Port Authority pier, down at the Port Authority.

THE COURT: All right.

Q Wasn't it the custom at that pier, Mr. Alston, for the foreman, when it was time for the longshoreman to go to lunch, to blow a whistle?

A Blow a what do you say?

Q I said, wasn't it the custom at Pier 3 when you were working on July 3, 1967, for the foreman to blow a whistle when it was time for the men to go to lunch?

A The foreman?

Q The foreman.

THE COURT: Who blew the whistle?

THE WITNESS: The stevedore would blow the whistle.

THE COURT: Which stevedore?

THE WITNESS: On the pier.

THE COURT: What man on the pier would blow the whistle?

THE WITNESS: The stevedore. He is the whole --

THE COURT: Who is the stevedore?

THE WITNESS: I don't know his name.

THE COURT: In other words --

Q Do you know his nickname?

A What's that?

Q Do you know his nickname? Was it Skirts?

A Skirts?

Q Skirts.

A Yes.

THE COURT: He would blow the whistle to tell you to go to lunch?

THE WITNESS: Yes.

THE COURT: All right. How do you spell that?

MR. KAIN: S-k-i-r-t-s, your Honor, I believe.

THE COURT: He was on the dock when he

would blow the whistle?

THE WITNESS: He was on the dock.

THE COURT: Yes. He would blow it?

THE WITNESS: Yes.

Q Was he the boss for all the longshoremen working there for American Stevedores?

A Who?

Q Was Skirts the boss?

A Yes. He was over the whole pier.

MR. KLONSKY: The boss for the whole thing.

Q When you stopped work or when you finished in No. 2 hatch, had you discharged all of the shrimp in that reefer box?

A Yes, yes. I finished the whole dish --

THE COURT: The whole what?

THE WITNESS: The whole hatch. We didn't leave nothing.

THE COURT: In other words, you emptied the whole hatch?

THE WITNESS: Yes. There was only shrimp in there.

THE COURT: There was only shrimp?

THE WITNESS: Yes.

Q If you know, was any check made of the upper

tween deck to make sure that all of the shrimp had been discharged?

A Yes. We had a watchman down there.

THE COURT: Who?

THE WITNESS: We had a watchman from the ship down there, a ship watchman.

Q Did you see the ship watchman making the check?

A No. I didn't see the ship watchman.

Q Well, my question to you, Mr. Alston is: if you know, did anybody make a check of that hatch to make sure that all the shrimp had been discharged when you left?

A No. I couldn't tell you that.

Q When you left, were you sent someplace else on the ship?

A When we left that hatch?

Q Yes. When you left that hatch.

A We went to 4.

Q When wereyou told that you were going to No. 4 hatch?

A After we finished discharging the shrimp.

THE COURT: "After we finished discharging the shrimp."

Q Were you still in the No. 2 upper 'tween deck when you were told you were going to No. 4 hatch?

54 Alstmn - cross

A Yes.

Q Would you tell me what you did when you were told you were going to No. 4 hatch? What did you yourself do?

A Well, we went to the No. 4 hatch.

Q How did you get to the No. 4 hatch?

A Walked.

THE COURT: What?

Q Would you tell me what route you took? How didyou get there?

A I don't know.

THE COURT: You're not there any more, are you?

THE WITNESS: I came up the ladder and walked on down to the hatch.

THE COURT: You came up the ladder to where?

THE WITNESS: To the top deck, and walked down.

THE COURT: Then what did you do on the top deck?

THE WITNESS: Nothing. I went down to No. 4.

THE COURT: Did you walk, swim, run?

THE WITNESS: I walked.

THE COURT: Walked where?

Did you walk on the top deck?

THE WITNESS: Yes, on the deck.

THE COURT: To No. 4 hatch?

THE WITNESS: To No. 4.

THE COURT: You better take him now.

Q Mr. Alston, do you remember how many ladders there were in the No. 2 upper 'tween deck leading from the No. 2 upper'tween deck up to the main deck?

A There was a ladder on each side.

Q Where?

A A ladder on each side of the ship.

Q Could you tell me --

MR. KLONSKY: Your Honor, I respectfully interrupt for clarification. Does he mean each side, fore and aft or --

THE COURT: Counselor, we'll get the clarification. We'll get it.

Read back a couple of questions and answers for continuity.

(Record read.)

MR. KLONSKY: I'll withdraw that.

Q Mr. Alston, as you sit there on the witness stand, do you have a recollection or do you remember exactly where those ladders were in No. 2 hatch?

56 Alston - cross

A No, I don't.

THE COURT: Were they in No. 2 hatch?

THE WITNESS: What is that?

THE COURT: Were there two ladders in the No. 2 hatch?

THE WITNESS: He asked me --

THE COURT: Never mind what he asked you.

THE WITNESS: There were two ladders in all of the hatches.

THE COURT: You said before there were two ladders, one on each side of the ship.

THE WITNESS: Yes.

THE COURT: Now you are saying additionally that the side of the ship is the inside of No. 2 hold?

THE WITNESS: That's right. The ladder came down on this side and this side (indicating).

THE COURT: But inside the hatch?

THE WITNESS: Inside the hatch.

Q Well, that is my question, Mr. Alston. If we consider this room that we are in now No. 2.hatch --

A Yes.

Q -- and where you and his Honor are sitting as the forward part of No. 2, and over there is the aft part,

and this is the port or inshore side and that is the offshore side (indicating), as you sit there, can you tell me where those ladders were located on July 3, 1967?

A The ladder we went down was the ladder on the inshore side.

Q You are saying the after part on the inshore side?

A Yes.

Q Where was the other one located?

A I don't remember now. I couldn't tell you. They have got to be on the side.

THE COURT: In other words, diagonally across?

THE WITNESS: Yes.

MR. KLONSKY: I think he said "aft end."

Q Is it a fair statement to say that you don't remember where the other ladder was?

A Right. I don't remember exactly.

Q On any of my questions, Mr. Alston, if you don't remember I want youto tell me.

When you left -- when I say "you," I mean the men in your gang. When your gang left No. 2 hatch, were there ship cleaners working in the hatch at that time?

THE COURT: Hatch No. 2.

Q No. 2.

A I don't know whether they were working there or going up. They were going up there, I think.

THE COURT: Going up before you left?

THE WITNESS: Before I left.

THE COURT: In other words, they left first and you left afterwards?

THE WITNESS: Yes. If they went and come back --

THE COURT: The cleaners came back?

THE WITNESS: They come back.

THE COURT: To where?

THE WITNESS: To the hatch.

THE COURT: Which hatch?

THE WITNESS: No. 2.

THE COURT: But you had already gone?

THE WITNESS: We had already gone.

THE COURT: I see.

Q Let me ask you, Mr. Alston, when did you first see cleaners working in No. 2 hatch, or did you ever see them working in No. 2 hatch that day?

A They come down the same time we were discharging, but Idon't know whether they finished or not. They went up --

THE COURT: But you didn't answer the

question. The question is: Did you ever see them working?

THE WITNESS: Yes, I see them working.

THE COURT: You saw them working?

THE WITNESS: Yes.

Q At what time of day did you first see them working on it, you yourself?

A I don't know. It was in the morning. I don't know.

Q Was that before or after you started to work down there?

A After we started working.

Q So, if I understand you correctly, you were working there when the cleaners came down; is that right?

A Yes.

Q Were any cleaners working in the upper 'tween deck while you were discharging cargo?

A No.

Q Do you know whether there were any -- any cleaners working in the lower 'tween deck or in the lower hold while you were discharging cargo?

A They was down in the lower hold.

THE COURT: That would be hatch 4 or hatch 2?

THE WITNESS: Hatch 2.

Q Were they also working in the lower 'tween deck,

do you know, while you were in the hatch, discharging?

A No, they weren't in the lower 'tween deck.

Q Just the lower hold?

THE COURT: He said: "Not in the lower 'tween deck."

Q While you were working discharging these shrimps in the No. 2 upper 'tween deck I think you said it was, were sling loads or containers of debris being taken out of the lower hold?

A There weren't no containers down there.

Q Well, were the cleaners sending any dirt, trash, wood, or anything --

A No. After we finished and left, then they take it out.

Q Did you see them taking it out at any time?

A No, I did not.

Q So, you don't personally know --

A No.

Q -- whether they took any dirt or trash out of there?

A No. No. He told us he had taken it out when we come to No. 4.

THE COURT: Who told you?

THE WITNESS: The cleaners.

THE COURT: Told you when you were already at No. 4?

THE WITNESS: No. When they finished, they come on and said: "We took them out."

THE COURT: The jury will disregard his answer, if any of you heard it.

Q Now, Mr. Alston, when your gang left No. 2 hatch after you were finished discharging the shrimp, did anybody blow a whistle at that time when you left?

A Not at the time we left.

Q When you left, did you recover the main deck?

A Where; No. 2?

Q No. 2.

A No.

Q When you left, was the entire square of No. 2 hatch open?

A At the top deck?

Q The top deck.

A Yes.

Q At any time that day, did another gang of American Stevedores longshoremen come on board ?

A I don't remember.

Q As far as you know, there was only one gang of longshoremen working that ship?

A Yes.

Q When you left No. 2 hatch and went back to --

or to go to back to No. 4 hatch, did you do anything with the hatch boards on the square of the No. 2 'tween deck up here (indicating)?

A We were -- what?

THE COURT: Read the question back to the witness loud and slow.

(Record read.)

A No. 2 'tween deck, we didn't move nothing when we left.

Q You didn't do anything with them?

A No. We left them on.

Q When you left No. 2 upper 'tween deck after finishing discharging the shrimp, was there a net across the forward end of the hatch boards you had put in place when you started to work?

A Yes.

Q Do you know who rigged the net?

A Who did what?

THE COURT: Rigged the --

Q Who rigged the net?

A Rigged?

THE COURT: Set it up.

Q Who put it up?

A We did.

Q Your gang did?

A Yes.

THE COURT: Which hatch was that?

THE WITNESS: No. 2.

Q Did you take the net down before you left?

A Yes.

Q What did you do with it?

A Put it on the pallets and sent it on the dock.

THE COURT: Put it where?

THE WITNESS: Put it on the pallets.

THE COURT: Put it on the pallets.

It was hoisted up by the boom?

THE WITNESS: Yes.

THE COURT: And swung over onto the dock?

THE WITNESS: Yes.

Q Was this a rope net?

A A what?

Q Was this a rope net?

A Yes.

THE COURT: You took it down whenyou were leaving?

THE WITNESS: Yes.

Q If you know, did this net belong to American Stevedores?

A Yes.

Q When you left No. 2 hatch, what did your gang do?

A Went to No. 4 hatch.

Q When you got to No. 4 hatch --

MR. KAIN: I'll withdraw the question.

Q When you went back to No. 4 hatch, did the plaintiff go back with you, Mr. Rodriquez?

A Yes.

Q Did you walk back with him?

A Did I do what?

Q Did you walk back with him?

A No, I didn't. I could have been behind him. I could have been in front of him.

Q Did he go back, if you know, the same way that you went back to No. 4 hatch?

A What?

Q I said, did he go back the same way that you went back? Did he climb up to the main deck and walk aft of the main deck, if you know?

THE COURT: Is that the way he went?

THE WITNESS: Yes.

Q What time of day did you get back to No. 4 hatch, approximately?

MR. KLONSKY: Your Honor, respectfully --

A I don't know. I don't know the time.

THE COURT: Just a minute. Do you have an objection?

MR. KLONSKY: MY objection is to, did he go back to No. 4 hatch? As if assuming that he had been there before. If he said, go aft to No. 4 hatch, that would make more sense.

THE COURT: The jury has been reasonably attentive. "Back" could be one of two things.

"Back" could mean again and "back" could mean the back of the ship.

Read back three or four questions and answers so that we get the continuity.

(Record read.)

Q Would it be about eleven o'clock?

A It couldn't have been eleven o'clock. It was after eleven when we finished the shrimp.

Q And about what time do you say it was --

A I couldnt tell you.

Q -- when you came back?

A I couldn't tell you.

Q Well, was it eleven thirty?

A I couldn't tell you.

Q What did you do -- what did your gang do when

you got back to No. 4 hatch?

A When we left No. 2 and went there, to No. 4 hatch, we started uncovering it.

THE COURT: What did you take off first?

THE WITNESS: No. 4, we took off the hatch covers.

THE COURT: Hatch covers. There was no tarpaulin to take off?

THE WITNESS: There was no tarpaulin to take off No. 4.

THE COURT: All right.

Q Did members of your gang rig booms at No. 4 hatch?

A Yes.

Q What time of day did they do that?

A After we got there.

Q That is sometime after 11?

A Right around 12 o'clock.

Q Did you take out the hatch beams at No. 4 hatch?

A Not until after one o'clock.

Q What?

A Not until after one.

Q Not until after one?

A Yes.

THE COURT: You say "hatch beams" or "hatch boards?"

MR. KAIN: Hatch beams.

THE COURT: I see.

When did you take off the hatch boards?

THE WITNESS: We started to take them off. We didn't get them off before twelve. The whistle blowed.

THE COURT: Did you take any of the hatch boards off?

THE WITNESS: Three or four.

THE COURT: How many altogether?

THE WITNESS: I couldn't tell you that. We just went down into the square in the 'tween deck. We just went down into the 'tween deck at twelve o'clock before the whistle blows.

THE COURT: You just went down to the 'tween deck to start to take them off, the hatch boards, when the whistle blew?

THE WITNESS: Yes.

THE COURT: How many hatch boards were on the main deck?

THE WITNESS: There wasn't none on No. 4.

THE COURT: I see.

Q Let me see if I understand you, Mr. Alston. You say when you got back to No. 4 there were no hatch boards on the top deck?

A No.

Q Just on the 'tween deck?

A Right.

Q When you got back to No. 4, were there hatch beams on the top deck?

A No. There was a rain tent on No. 4. All you have to do is pull the rain tent back.

THE COURT: Would you read that back?

(Record read.)

THE WITNESS: You have to pull it back and rig them, or something.

THE COURT: What?

THE WITNESS: We didn't put it back. We don't know whether the shrimp crew done it or not.

THE COURT: There was a rain tent there over the top opening?

THE WITNESS: Yes.

Q Were you present when that rain tent was rigged?

A No.

Q At No. 4 hatch?

A No.

Q When you got back there, there was a rain tent over there?

A There wasn't. Somebody had taken it off.

THE COURT: When you got there?

THE WITNESS: It wasn't on there.

THE COURT: When was it on there?

THE WITNESS: On the night. Somebody had taken it off that morning, taken it off when we got back there.

THE COURT: It was already off --

THE WITNESS: Already off --

THE COURT: -- when you went there in the morning?

THE WITNESS: When we started working.

THE COURT: Before or after lunch?

THE WITNESS: Before lunch. It was off.

THE COURT: There was no rain tent there at any time?

THE WITNESS: No rain tent there.

Q Let me see if I understand, Mr. Alston. Is it your testimony that when you went to work at eight o'clock that morning, there was a rain tent rigged at No. 4

hatch?

A No. I didn't say that.

Q Did you ever -- you, personally, ever see a rain tent rigged at No. 4 hatch that day?

A I don't remember whether I did or not.

Q So, you are assuming there was one there, becauase No. 4 hatch was open?

A It was open when we went there to eat.

Q Is that why you are assuming it was there?

A Yes. The rain tent was on in the morning but we didn't take it off.

THE COURT: Read the question back to the witness. Strike the rest of it out.

(Record read.)

THE COURT: Well, the question that you are being asked is: Did you, Mr. Alston -- did you with your own eyes ever see a rain tent at Hatch 4; yes or no?

THE WITNESS: No.

THE COURT: You didn't?

THE WITNESS: No.

THE COURT: All right.

Q You said you have been a longshoreman for fifteen years, Mr. Alston?

A Yes.

Q Is that right?

A Yes.

Q Was that fifteen years prior to today or fifteen years before 1967?

A Well, I worked a longshoreman for fifteen --

THE COURT: Since 1950?

THE WITNESS: 1950.

THE COURT: So it is twenty years before today.

THE WITNESS: So, I've been -- three years of that I was out.

THE COURT: Three years you were out?

THE WITNESS: Yes.

THE COURT: That is seventeen years out of twenty, or twenty one. Eighteen years.

Q Have youalways worked as a hold man?

A No.

Q Have you worked as a deck man?

A No.

Q Dock man?

A Dock man.

Q How much of the time that you have worked as a longshoreman -- about how much of that time has been working

as a hold man?

A I was a dock man about two years. The rest of the time I was a hold man.

THE COURT: So, you would say you worked about fifteen years as a dock man and only two years as a hold man?

MR. KLONSKY: I thought it was the other way around.

THE WITNESS: The other way around. Two years as a dock man, fifteen years as a hold man.

THE COURT: All right. That is seventeen years, and three years he was out. That makes up twenty years.

Q And it is the holdman, isn't it, Mr. Alston, who uncovers the hatch aboard ship?

A Yes.

Q That isyour job?

A That's right.

Q The deckmen don't do that; do they?

A No.

THE COURT: Are yousay deck or dock men?

MR. KAIN: Deck men.

THE COURT: Did you ever work as a deck man?

Q How many hold men did you havein this gang;

eight?

A Right.

THE COURT: Is that right?

THE WITNESS: That's right.

Q And how much time did it take the eight men in your gang to uncover one of these hatch squares of the size at No. 4 hatch and No. 2 hatch?

A I wouldn't know.

Q Aboard the SUNNY PRINCE?

MR. KLONSKY: Objection, your Honor.

THE COURT: Overruled.

A I wouldn't know.

MR. KLONSKY: Does your Honor wish to know why I object?

THE COURT: Sir?

MR. KLONSKY: Does your Honor --

THE COURT: Maybe because the witness answered, no, he doesn't know.

Q Could your gang do it in fifteen minutes? Could you gang uncover a hatch in fifteen minutes?

A I don't know. I couldn't tell you.

Q Is it your testimony that after all the years you worked as a longshoreman, you don't know how long it takes your gang to uncover a hatch?

A No, I do not.

THE COURT: Do you carry a watch?

THE WITNESS: No.

THE COURT: Never?

THE WITNESS: No.

Q While you went down, you, yourself, when you went down in the No. 2 upper 'tween deck, Mr. Alston, did you take a hand hook and gloves with you, you yourself?

A When I went down to No. 2?

Q Yes.

A Yes.

Q When you started to work there?

A Yes.

THE COURT: That is the baling hook and gloves?

THE WITNESS: Yes.

THE COURT: You took them with you?

THE WITNESS: Yes.

Q If you know, did the other hold men in your gang take the same equipment with them?

A No. I couldn't tell you. I wouldn't know.

Q You don't know.

When did you first hear that Mr. Rodriguez -- or when did Mr. Rodriguez first report to you that he had

left his gloves and his hook in No. 2 hatch?

A When we came back and started to work at one o'clock.

Q That is the first time he told you about that?

A Yes.

Q Did he work with the gang from -- whenever you left No. 2 hatch until lunchtime?

A Yes.

Q Did you see him working with the gang at that time?

A Yes.

Q When you went to lunch, had you uncovered the No. 2 upper 'tween deck?

THE COURT: What is that?

Q I'm sorry. The No. 4 upper 'tween deck.

THE COURT: Oh.

A No. I hadn't finished unsovering it.

Q Had you started it?

A Just started it.

Q Do you remember about how many hatch boards were uncovered?

A No, I don't remember.

MR. KLONSKY: Your Honor, this was answered about five minutes ago.

THE COURT: Well, now, the witness says he doesn't remember. I do.

What did you testify about, about the number of boards that were uncovered when the man blew the whistle to go to lunch?

THE WITNESS: I didn't know exactly. I said maybe four or five.

THE COURT: That is what you testified to a few minutes ago?

THE WITNESS: Yes. But I didn't know exactly.

THE COURT: All right.

Q Did the men in your gang, the hold men in your gang, these ten hold men, did they do anything else other than take off hatch boards on No. 4 before going to lunch?

A The hold men?

Q From the time you left No. 2 until the time you went to lunch?

A No.

Q Did the two dock men who were working with you in the No. 2 upper 'tween deck, did they help you take off the hatch boards on No. 4?

A They went to the dock when we finished 2. They went back on the dock.

THE COURT: In other words, when you finished with the shrimp --

THE WITNESS: The hold -- the dock --

THE COURT: -- the two dock men went back to the dock?

THE WITNESS: Yes.

THE COURT: And the rest of you went over to Hold No. 4?

THE WITNESS: That's right.

THE COURT: How many of you?

THE WITNESS: Eight.

THE COURT: Eight were still left?

THE WITNESS: Yes.

THE COURT: And two dock men who had gone back to the dock. That made ten who were working in Hatch No. 2?

THE WITNESS: Yes.

THE COURT: Right. And only eight were at Hatch No. 4 before lunch?

THE WITNESS: Yes, that's right.

THE COURT: The witness answers "yes."

Q And it is your testimony that the eight hold men in your gang, from the time you got to No. 4 until you went to lunch, you eight men had taken off only four or five hatch boards; is that your testimony?

A That is all we had taken off.

Q Do you remember how much you got paid an hour in 1967, July 1967, you yourself?

A How much I got paid an hour?

Q Yes. What was the hourly rate for you in 1967?

A I don't know. I don't know exactly how much it was.

Q Was it more than three dollars?

A About three thirty-five or something like that.

THE COURT: An hour?

THE WITNESS: Yes.

Q When you went to lunch at twelve o'clock you were then in the No. 4 'tween deck; is that right?

A Yes.

Q Before you went to lunch, did youcover the No. 4 'tween deck?

A Did we cover it?

Q Did you cover it?

A No.

Q Did you cover the main deck?

A We didn't cover nothing.

Q The top?

THE COURT: Well, you are being asked did you put back the four or five boards you took off.

THE WITNESS: No, no.

Q Did you put a net or anything over these boards or the space where the boards had been?

A No.

THE COUNT: Before lunch?

THE WITNESS: No.

Q And you didn't put anything over the --

A No, nothing.

Q -- over the square of the hatch or on the top of No. 4; is that right?

A Right.

Q When you went to lunch,you didn't know that Mr. Rodriguez had left his gloves and hook in the No. 2 hatch?

A No, I didn't.

Q Do you remember where in No. 4 hatch you were when Mr. Rodriguez reported to you?

A Where was I in No. 4?

Q I say --

THE COURT: No.

Q Where in the hatch were you?

THE COURT: You are being asked where Mr. Rodriguez was standing or sitting or lying --

THE WITNESS: I don't know.

THE COURT: -- whenhe told you about the gloves

and the hook.

THE WITNESS: He was on the offshore side in the hold, in the 'tween deck.

THE COURT: In the 'tween deck?

THE WITNESS: Yes.

THE COURT: Not the lowest deck?

THE WITNESS: Not the lower part.

THE COURT: The 'tween deck.

Q Do you remember whether he was in the after part of the offshore side?

A I don't know.

Q You don't remember where in the 'tween deck he was?

A No, I don't.

Q And he told you, if I recall your testimony correctly, that he had left his bale hook and his gloves in No. 2 hatch?

A Right.

Q Had you told him to go get them?

A Yes.

Q Is that correct?

A That's correct.

Q Did you tell him how to get there?

A I did not.

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Q You just told him to go get them?

A Right.

Q Did you watch him as he left the hatch?

A No, I did not.

Q So, you don't know how he went [illegible] of the hatch?

A No, I don't.

Q And that is the last time you saw him; is that right?

A Yes.

THE COURT: Were you his superior, above Mr. Rodriguez?

THE WITNESS: Did he what?

THE COURT: Were you, you -- did you have a position above him?

THE WITNESS: Yes.

THE COURT: In other words, he had to speak to you?

THE WITNESS: Yes.

THE COURT: All right.

Q Mr. Nolley, I think you said, was the hatch boss on this?

A Yes.

THE COURT: That is Nolley?

MR. KAIN: Nolley, your Honor.

THE COURT: N-o-l-l-e-y-, I think he said.

Q And you were a header; is that correct?

A Yes.

Q And that means that three of the hold men worked under you?

A Yes.

Q And they took orders from you, did they, when Nolley wasn't there to give them orders?

A That's right.

Q If Nolley was there, did he give them the orders rather than you?

A No. He'd tell me and I would tell them.

Q He told you?

A Yes.

Q Now, was there another header in your hold gang to cover the other four men?

A Yes.

Q Or the other three men and himself?

A Yes.

THE COURT: Was Mr. Rodriguez one of the four men under you?

THE WITNESS: On my side, yes.

THE COURT: You were the header for Rodriguez and three other men?

THE WITNESS: Yes.

THE COURT: All right.

Q Let me ask you, Mr. Alston, you said on your side. Are you indicating that customarily, four hold men work on one side of the hold and four men work on the other side?

A That is right.

Q And you were the header for which side, the offshore or the inshore side?

A Offshore.

Q And is that because you alternate the cargo hook normally in the discharge of general cargo?

A You what?

Q Is that because you alternate taking the drafts out with the cargo hook? Is that why you split up with four men on either side?

THE COURT: Why do you split up?

MR. KLONSKY: Your Honor, I object to the relevancy of the question.

THE COURT: Overruled.

Read back about three or four questions and answers so that we can pick up the continuity.

(Record read.)

THE COURT: Give your answer now, which will

explain --

THE WITNESS: The four men --

THE COURT: Just a second.

-- which will explain why you had the offshore side and not the inshore side and why the other group had the inshore side and not the offshore side.

THE WITNESS: Well, they worked inshore all the time and I work offshore.

THE COURT They work inshore all the time?

THE WITNESS: Yes.

THE COURT: That is nearest the pier side of the ship?

THE WITNESS: That is the way it was when I went into the gang. That's all.

THE COURT: Did you ever work on the inshore side?

THE WITNESS: No.

THE COURT: That means that the men who were under you also worked where you worked?

THE WITNESS: Yes.

THE COURT: That is, on the offshore side?

THE WITNESS: Yes.

Q If you know, Mr. Rodriguez -- after you told Mr. Rodriguez to get his hook and his gloves, did you yourself

go in any other hatch on that ship that day?

A I don't remember. I don't know.

Q In the approximately twenty years that you have been working as a holdman, I think you said it was --

THE COURT: Twenty years with three years out.

Q I'm sorry. Well, in the seventeen years that you have been working as a holdman --

THE COURT: No. I think he said he was working two years as a dockman; the rest of the time as a holdman.

MR.KAIN: All right, your Honor.

THE COURT: And that was out of the twenty years from which he subtracted three years.

Q Mr. Alston, in your experience as a holdman, have there been many occasions when you worked the same hatch aboard a ship for more than one day, two, three, four days, maybe?

A Have there been what? I didn't understand.

THE COURT: Were there times when you worked more than one day in the same hatch?

THE WITNESS: Worked --

THE COURT: Not on this ship; any ship.

THE WITNESS: Yes, any ship.

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THE COURT: He said, "Yes."

Q This isn't unusual; is it? You do this all the time ?

A What? Work more than one day in one hatch?

Q Yes.

A Oh, yes. Worked a lot of times.

THE COURT: "A lot of times."

Q And you start at the top usually and work down, taking out all the cargo that is to come off in the Port of New York here; is that right?

A Yes.

Q When you finish at night, five o'clock at night, is it your practice to cover up the hatch, batten down the hatch before you go home?

A Right; on the top deck.

Q On the top deck?

A Yes.

Q If you are working in the lower 'tween deck and you're going to come back there the next morning, is it your practice cover up in the upper 'tweendeck or do you just cover the top deck?

A Cover the top. That's all.

Q And you leave the 'tween deck open; is that right?

A Right.

Q And sometimes you put back hatch boards and beams and sometimes you just drop a rain tent over the top of it; is that right?

A That's right.

MR.KLONSKY: Your Honor, I object to this line of irrelevant questioning. What he does on other ships --

MR. KAIN: I submit, your Honor, it is relevant to this case.

THE COURT: If you are going to engage in colloquy, go ahead. I will go out and I will let you impress the jury, if you can.

Counselor, if you have an objection, you state it in legal language. This is cross-examination. I will allow it. I will overrule your objection.

Read the question back, possibly the question before this one, and the answer, and then this question.

(Record read.)

THE COURT: What is a rain tent? What does it look like, a rain tent? Does it look like a tent?

THE WITNESS: Yes. It has got a tent, something

like that, with four corners to hold the top of the square (indicating).

THE COURT: All right, we can't hear his words, but the gestures he has made indicates that he is describing a tent, like Ringling Brothers tent, with acrobats flying underneath.

THE WITNESS: You hook it onto the table on the boom. You draw it up. You get four corners and tie it over there (indicating).

THE COURT: You hook it onto the sides of the hatch?

THE WITNESS: To the boom, and draw it up.

THE COURT: And that makes a tent?

THE WITNESS: Yes, with four corners.

THE COURT: Does it cover the whole square of the hatch?

THE WITNESS: It covers it.

THE COURT: Go ahead.

Q I think you told us that July 3, 1967, was the first day on this particular voyage of this ship that you worked on the sunny prince; is that right?

A Right.

Q Was it also the last day that you worked on this ship, if you recall?

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A I don't remember.

Q In any event, you didn't work the next day, July 4th; did you?

A I don't know; whether we worked on the pier the next day --

THE COURT: July 4th is a holiday. But you might have worked on the holiday?

THE WITNESS: It could have been. I don't remember. I know we didn't work at Pier 3.

THE COURT: What is that?

THE WITNESS: I know we didn't work on this ship.

THE COURT: In other words, if you worked on July 4th, you didn't work on that ship?

THE WITNESS: No; that's right.

Q Did you give Mr. Rodriguez any instructions when you told him to go get his hook?

A Instruct him?

THE COURT: Did you say anything else to him except: Go get your hook.

THE WITNESS: No, I didn't. I told him to go get his hook.

Q You didn't tell him how to get there?

A No.

Q You didn't ask him if he had a flashlight?

A I didn't tell him nothing.

Q I didn't tell himanything except, "Go there and get your hook"?

MR. KLONSKY: Objection. Repetitious.

THE COURT: Well, the second part about the flashlight is brand new.

You didn't tell him anything about a flashlight?

THE WITNESS: No, sir.

THE COURT: All right.

Q Do you know if he had a flashlight?

A I don't know.

Q Well, is it a fair statement to say that the only thing you said to him was:"Go and get it"?

That is the only thing I said to him, "Go get your hook."

MR. KAIN: No further questions.

THE COURT: All right. Are there any questions? Do you have any?

Just a moment. I am going to have a recess. I just want to know what the situation is.

MR. COHEN: Will we have a short recess?

THE COURT: Are you going to ask questions

MR. COHEN: Two or three.

THE COURT: Mr. Wolf, do you expect to ask any questions?

MR. WOLF: No.

THE COURT: We'll take a recess now for five minutes.

Heed my admonition earlier given.

You may step down.

(Jury leaves jury box.)

(Recess taken.)

THE COURT: Get the jury in, please.

(The jury enters the jury box at 4 p.m.)

THE COURT: All right, Mr. Alston.

MR. KAIN: Your Honor, may I implement two or three questions?

THE COURT: Do you wish to resume?

All right.

MR. KAIN: Yes, sir.

THE COURT: All right, you are still under oath.

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S A M U E L A L S T O N, having been previously sworn, resumed the stand and testified further as follows.

CROSS-EXAMINATION

BY MR. KAIN: (Continued)

Q Now, Mr. Alston, other than Mr. Rodriguez, did you get any reports from any other longshoremen in your gang that they had left gloves and hooks in No. 2 hatch?

MR. KLONSKY: Objection, your Honor.

A I didn't.

THE COURT: I'll allow it.

A I didn't, no. I heard nobody say that.

Q Based on your experience as a longshoreman, isn't it the practice for the longshoremen to cover and uncover hatches in the Port of New York?

A I didn't understand what you said.

MR. KAIN: Would you read it back, please.

(Record read.)

A Is it a -- what do you mean by that? I don't understand the meaning.

Q The ship's crew don't uncover these hatches and cover them when you work aboard ship; do they?

A The crew?

Q The crew.

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A Sometimes the crew covers and sometimes they don't.

Q Sometimes they do and sometimes they don't?

A Yes.

Q On this ship, the SUNNY PRINCE in July of 1967, to your knowledge, did any of the ship's crew cover or uncover any of the hatches whileyou were on the ship?

MR. KLONSKY: Objection, your Honor.

THE COURT: Was this the first day you were on the ship?

THE WITNESS: I don't remember.

THE COURT: I say, was this the first day you were on the ship?

THE WITNESS: The first day, yes.

THE COURT: Were you ever on this ship before?

THE WITNESS: Not on this ship.

THE COURT: Did you ever go on this ship again?

THE WITNESS: No.

THE COURT: All right. I will sustain an objection to the question.

Q Had you as a longshoreman received any instructions about not entering unlighted hatches?

MR. KLONSKY: Objection, your Honor.

THE COURT: Oh, I'll allow it. You are

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going into an area that was not testified to by this witness on direct.

I will permit this question. Read the question to the witness.

(Record read.)

A Unlighted?

Q Yes, where there were no lights. Were you told not to enter unlighted hatches?

A Lighted?

Q Unlighted, dark.

MR. KLONSKY: Unlighted.

THE WITNESS: What?

Q Unlighted, no lights. Were you told not to go into hatches where there were no lights?

A No. We were told never, never the lights --

THE COURT: What about the lights?

THE WITNESS: You were supposed to have a light before you go in there.

THE COURT: You were supposed to have a light?

THE WITNESS: Yes.

THE COURT: Before you go down into the hatch?

THE WITNESS: Yes.

MR. KAIN: No further questions.

THE COURT: All right. Mr. Cohen.

CROSS-EXAMINATION

BY MR. COHEN:

Q Mr. Alston, --

A Yes.

Q -- the shrimp that your men were taking out that morning was from the No. 2 upper 'tween deck; is that right?

A Yes.

Q And you were taking out from a reefer chamber towards the back end of that hatch; is that right?

A Right.

Q And as your men were doing that work, taking out the shrimp that morning from the upper 'tween deck, were there some cleaners who were working there in the No. 2 lower hold?

A One time. I don't know about --

THE COURT: Just a second.

THE WITNESS: Yes. There were some down there.

THE COURT: Just a second. You have been on the stand long enough so that you can answer the question as put. If you don't understand

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the question, say you don't understand it.

Now, read that question loud and clear, and listen.

(Record read.)

THE COURT: At the same time --

THE WITNESS: Yes.

THE COURT: While you were in the 'tween deck?

THE WITNESS: Yes.

THE COURT: They were already in the lower hold?

THE WITNESS: They came in while we was in the 'tween deck.

THE COURT: They came in where?

THE WITNESS: No. 2.

THE COURT: Where?

THE WITNESS: In the lower hold.

THE COURT: And they were cleaning up while you were still there?

THE WITNESS: Yes.

THE COURT: All right.

BY MR.COHEN:

Q And after you finished your work in the 'tween deck, were the cleaners then to go and clean up in that area?

A They had left now.

THE COURT: They had gone out of the hold?

THE WITNESS: Yes.

THE COURT: While you were still there?

THE WITNESS: Yes.

BY MR. COHEN:

Q Did you have a conversation with the man who was in charge of the cleaners?

THE COURT: Read that question back. I didn't catch it.

(Record read.)

A No.

Q Did you have a conversation --

MR. COHEN: Withdrawn.

Q Did you talk to any of the cleaners?

A I had nothing to say to them.

Q Now, do you know if the cleaners were to go back to the No. 2 Hatch after you left?

A They went back. After we left, they said -- I don't know.

THE COURT: No, no. Do you know whether they were supposed to come back?

THE WITNESS: I don't know.

THE COURT: They did come back, though; didn't they?

THE WITNESS: Yes, they did come back.

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THE COURT: Where were you when they came back?

THE WITNESS: In 4.

THE COURT: Were you already in 4?

THE WITNESS: Right.

THE COURT: When they came back into No. 2?

THE WITNESS: Yes.

THE COURT: All right.

BY MR. COHEN:

Q Okay. Now, when your group left the No. 2 'tween deck, did you climb up the after ladder?

A Did I climb up?

Q Yes, the after ladder, the one toward the back of the hatch?

A Yes, the ladder in the after end.

THE COURT: Is that the ladder you used --

THE WITNESS: That is the ladder.

THE COURT: -- to climb out?

THE WITNESS: Yes.

Q And the hatch floor -- the hatch square of the after end on the 'tween deck, that was covered in with the hatch boards; is that right?

A That's right.

Q Okay. And when your men climbed out of the

hatch onto the main deck, the main deck was opened; is that correct?

A Correct.

Q And that open space is about twenty feet wide?

A About twenty feet wide, something like that.

Q Twenty feet wide and about how long was it?

A I couldn't tell; forty or fifty feet long.

THE COURT: Forty to fifty feet long?

THE WITNESS: Yes.

Q Okay. And when you and your men left the No. 2 hatch to go over to No. 4 (indicating) -- when you left No. 2 to go over to No. 4, you left that open area about twenty by forty feet or so? You left that opened; right?

A Yes.

Q All right. And that was the last you saw of that hatch that day; is that right?

A That's right.

MR. COHEN: All right. I have no further questions.

MR. WOLF: May I ask one or two, your Honor?

THE COURT: Yes, surely.

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CROSS-EXAMINATION

BY MR. WOLF:

Q Mr. Alston --

A Yes.

Q How do you know thatthe cleaners returned to the No. 2 hatch?

A How do I know they returned there? Because they come back over while we wereback over to use the boom.

Q I'm sorry?

THE COURT: We'll find out.

The question is: How did you know that the cleaners went back to No. 2 hold?

THE WITNESS: Because one of them came over and told the No. 4 --

THE COURT: One of them came and told who?

THE WITNESS: They said they were --

THE COURT: Told whom?

THE WITNESS: They told nobody. They said, "We're taking it out."

THE COURT: Taking what out?

THE WITNESS: The trash where they were swept up in the lower hold. They took it out.

THE COURT: That is, from No. 4?

THE WITNESS: To No. 2.

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THE COURT: To No. 2?

THE WITNESS: Yes.

THE COURT: Where were they when they told you this?

THE WITNESS: Going over to No. 4.

THE COURT: Why did they tell you this?

THE WITNESS: Because they were going to start cleaning No. 4.

THE COURT: Had they already taken the trash out of No. 4?

THE WITNESS: Yes.

THE COURT: And they were going to No. 4.

MR. KAIN: Your Honor, may I note my objection on the record to this testimony as hearsay, on the basis of the witness's testimony, and I ask that it be stricken from the record and for the jury to disregard it.

THE COURT: We'll see if it is to be disregarded. For the moment, I will overrule your objection.

You say you were working in 'tween deck No. 4 hatch while the cleaners were cleaning up, taking the trash out of No. 4?

THE WITNESS: Not 'tween deck No. 4, 'tween

deck No. 2.

THE COURT: But you weren't there any more.

THE WITNESS: No. We weren't there.

THE COURT: You were in 4.

THE WITNESS: In 4.

THE COURT: Well, 4 is some distance away from 2.

THE WITNESS: All the way around.

THE COURT: You were down in the bottom hold.

THE WITNESS: Yes.

THE COURT: How did you know they were cleaning up?

THE WITNESS: I didn't know. They came down No. 4 and said they had left the stuff down in the lower hold filled up. It had to be taken out with the boom. They couldn't take it out until we left. We were using the boom.

THE COURT: Well, that is while you were at No. 4.

THE WITNESS: Yes.

THE COURT: What were they doing at No. 4?

THE WITNESS: Coming to clean it.

THE COURT: Members of the jury, you will

disregard any testimony as to whether the cleaners were in or were not in Hold No. 2. I can't make out from this witness whether the objection was well taken or not. I will assume it is well taken.

MR. KLONSKY: Does your Honor mean to disregard so much of his testimony as to the men being in No. 2 while he was in No. 4?

THE COURT: Exactly, that he had some knowledge as to what was going on in No. 2. I will sustain the objection until it becomes clearer that he had knowledge.

MR. KLONSKY: That is after he left No. 2?

THE COURT: That's right.

While you were in Hold No. 2, 'tween deck Hatch No. 2, you said the cleaners came down. They cleaned up while you were still there and they left while you were still there.

THE WITNESS: That's right.

THE COURT: Then you went away --

THE WITNESS: Yes. They came back.

THE COURT: -- to 4, and now you say they came back. And the lawyer is asking how did you know that they came back.

THE WITNESS: When they came over to No. 4 --

THE COURT: Who?

THE WITNESS: When the cleaners came over --

THE COURT: This was after your lunch?

THE WITNESS: This was after lunch.

THE COURT: Yes?

THE WITNESS: They told us --

THE COURT: Who told whom?

THE WITNESS: The ship cleaners.

THE COURT: The whole ship cleaners got together like a chorus in the opera and they sang?

THE WITNESS: When they came over, they said they had finished taking it out.

THE COURT: That they had finished taking the stuff out?

THE WITNESS: Yes.

THE COURT: I sustained the objection that was interposed before, and the jury will disregard it, because the witness did not see what had been done and we don't know who it is that is telling it.

BY MR. WOLF:

Q Mr.Alston, when you and your gang arrived that morning in the 'tween deck of the No. 2 hatch, the cleaners were already there; weren't they?

A I didn't say that. I don't know whether they were there. I don't remember.

Q All right. About the same time that you arrived, they were there?

A Yes.

Q Now, at some time during that same morning, you said before the cleaners left?

A Yes.

THE COURT: And you were still there?

THE WITNESS: We were still there.

Q You were still there?

A That's right.

Q Now, when the cleaners climbed out of the -- did theyclimb out of the hold?

A Yes.

Q And how did they climb up?

A They got a ladder on the side.

Q How did they get past the 'tween deck hatch there?

A We did not cover that end over there.

Q I beg your pardon?

A We did not cover the farther end.

THE COURT: You covered only half of it?

THE WITNESS: Yes.

Q Was there still a net over it?

A It had a net running across.

Q They had to get through that?

A Yes.

THE COURT: Which way did the net run; up and down or across?

THE WITNESS: Straight across like this (indicating), down from the 'tween deck up to the top deck.

THE COURT: In other words, the net--

THE WITNESS: That is to save the men.

THE COURT: Just a second. The net divided the hatch so that on one side of the net it was covered, the other was not?

THE WITNESS: This side, while we're working, this side over here was not covered.

THE COURT: The side where you were working was covered?

THE WITNESS: Yes.

THE COURT: The side where youwere not working was uncovered?

THE WITNESS: Right, all the way down.

BY MR. WOLF:

Q Now, as they left, as the cleaners left, did any of them say anything that was heard by you about their

returning?

MR. KAIN: Objection, your Honor. Even if the witness may answer the question, I submit it is hearsay.

MR. WOLF: I am not asking what they said.

THE COURT: Overruled.

Did you hear anybody say whether or not they would return; yes or no?

THE WITNESS: Whether they would return back to 2?

THE COURT: No. Did you hear anybody say anything?

THE WITNESS: NO.

THE COURT: He says he heard nobody say anything.

BY MR. WOLF:

Q Then at that time, when they were leaving, did you know or didn'tyou know that they were returning?

A They have to, yes. I know they were going to return.

Q You know they were going to return?

A Yes.

Q Did Rodriguez know they were going to return?

MR. KLONSKY: Objection, your Honor.

A I don't know whether he did or not.

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THE COURT: Just a moment.

You are asking this witness whether he knew whether Mr. Rodriguez --

MR. WOLF: I'll withdraw the question.

THE COURT: The question is withdrawn. The jury will disregard the answer.

Any redirect?

MR. KLONSKY: No, your Honor.

THE COURT: You may step down.

Do you require this witness for any purpose?

MR. KAIN: No, your Honor.

THE COURT: All right. He is released.

You may go.

(Witness excused.)

THE COURT: Do you want to call your next witness, please?

MR. KLONSKY: Mr. Rodriguez.

J O S E P H R O D R I G U E Z, having been called as a witness, is duly sworn by the Clerk of the Court and is examined and testifies as follows:

THE CLERK: What is your full name?

THE WITNESS: Joseph M. Rodriguez.

THE CLERK: Where do you live?

THE WITNESS: 211 Sackett Street -- excuse me, I moved. I live at 221 Schaefer Street now.

THE CLERK: In Brooklyn.

THE WITNESS: In Brooklyn.

MR. KLONSKY: Does your Honor intend to adjourn at 4:30?

THE COURT: Yes. 4:30 we'll adjourn. It is the usual time.

DIRECT EXAMINATION

BY MR. KLONSKY:

Q Mr. Rodriguez, are you the plaintiff in this case?

A Yes, I am.

Q And are you bringing a suit for an accident that occurred to you on July 3, 1967?

A Yes, I am.

Q Now, when and where were you born?

A I was born August 8, 1945, in Brooklyn.

Q And how far did you go in school?

A I went up to first year high school. I didn't finish. I dropped out.

Q How old were you then?

A I guess I was about maybe seventeen.

Q I see. What kind of work did you first go into when you left school?

A I went into factory work.

THE COURT: Counselor, this is an accident case. The accident is supposed to have happened July 3, 1967.

After you have gotten the accident testified to, we can go into these other items as to whether he is married, whether he has been in the army, whether he has won medals, whether he has been wounded, and so on.

MR. KLONSKY: All right, sir.

THE COURT: I will probably exclude testimony of that nature.

BY MR. KLONSKY:

Q On July 3, 1967, by whomwere you employed?

A American Stevedores.

Q How long had youworked for American Stevedores

before that day?

A About eight months.

Q Had you worked for other stevedores before that?

A Yes, several.

Q So, how long before July 3, 1967, had you worked as a longshoreman altogether?

A Close to about a year and maybe a few months.

Q I see. And your work as a longshoreman, was it always in one capacity or were there others?

A There was another.

Q Besides being a holdman, what else were you?

A Well, in the beginning, I applied for a driver and I wasn't making enough money. That is why I applied for a hold man. It was a hard job but I made more money there.

Q I see. So, you did at times drive a hi-lo?

A Yes, I did.

Q This would be a cargo moving machine on the dock and sometimes in the hold of the ship?

A Yes.

Q Being a holdman is hardy work, you say?

A Completely.

Q Is that when you have to push cargo and thing

A Yes, sir.

Q How long were you with Mr. Alston's gang?

A About eight months.

Q Were you always a holdman in that eight months?

A Always.

Q I see. Now, on July 3, 1967, before you went to work, what was the state of your health?

A Well, I was in pretty good condition. I had nothing bothering me.

THE COURT: How old are you?

THE WITNESS: Right now I am twenty-five.

Q You were then twenty-one; were you?

A Yes, I was.

Q What time did you report to work that day?

A Eight o'clock in the morning.

Q And did you shape up on the ship or did you meet elsewhere?

A I met at home pier, that is pier 3. That is my home pier. That is the one I go to every morning when my job is there.

Q About what time was that?

A I got to the pier a little before eight, a few minutes before eight. I checked in.

Well, I can't recall the time because it was like drizzling at the moment and we were just standing by for a few minutes.

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Q I see. Did you know before you checked in at your home pier what ship you were going to work on?

A No, I didn't.

Q Now, this MV SUNNY PRINCE, had you ever worked on it before?

A Never.

Q While you were there with your men, were you told that was the ship you were going to work at?

A No. I didn't know anything.

Q Did there come a time when you knew?

A No. I just checked in and followed the men.

Q The men took you where?

A Straight to -- aboard the ship.

Q Where was the ship located?

A Well, that was on the left side of the pier.

Q What pier?

A Pier 3.

Q Now, whowas your hatch boss?

A Sam Nolley.

Q Who was your header?

A Sam Alston.

Q That is the gentleman who just testified before you?

A That's right.

Q When you came up on the ship that morning, about what time was it?

A Roughly, I'd say about 8:30.

Q I see.

THE COURT: In the morning?

THE WITNESS: Yes, sir.

Q Had it been drizzling earlier that day?

A That's right.

MR. KLONSKY: Your Honor, at this time I offer in evidence a photostatic copy --

THE COURT: You tell it to your adversary. Maybe we can get an agreement. Otherwise, we'll have a side bar.

(Document handed to Mr. Kain.)

MR. KAIN: I don't --

THE COURT: No objection?

MR. KAIN: I have no objection, your Honor, except I'd like it designated as such. I understand that -- I don't object to it as a document, but for what it purports to be on there.

THE COURT: What does that mean?

We'll have a side bar.

(The following was held at the side bar outside the hearing of the jury.)

MR. KAIN: It purports to be a weather report. I don't object to a local weather report going in as long as it is designated as a weather report and the station is named.

THE COURT: It is Central Park.

MR. KAIN: If it is designated as such --

THE COURT: It is the U. S. Department of Commerce.

MR. KAIN: I have no objection to it.

THE COURT: What year is this?

MR. KLONSKY: This is '67.

THE COURT: July '67.

It doesn't show any snow.

MR.KLONSKY: No, not in July, Judge. The only snow we get in July is in the courtroom.

MR. KAIN: I have no objection, your Honor, as long as it is identified for what it is.

MR. KLONSKY: Certainly.

MR. KAIN: Central Park Station, record of the Weather Bureau, July 1967.

THE COURT: Where is it?

MR. KLONSKY: The Weather Bureau report is here. It tells you the indications of rain during that time.

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THE COURT: So, what is it? You have got testimony it was drizzling.

MR. KLONSKY: I would like to corroborate it.

MR. KAIN: There is no objection.

THE COURT: Mark it.

(The following is held in open court.)

THE COURT: All right. A United States Weather Bureau report for the month of July 1967, the readings being at Central Park --

MR. KLONSKY: Yes.

THE COURT: -- is received in evidence as what?

THE CLERK: Exhibit 5, your Honor.

So marked in evidence as Plaintiff's Exhibit 5.

(So marked.)

THE COURT: It is a photostatic copy. Let me see it, please.

(Exhibit handed to the Court.)

MR. KLONSKY: With the Court's permission, may I read certain information?

THE COURT: Not now. Later.

MR. KLONSKY: Not now?

THE COURT: We'll get involved in a long digression. It is unnecessary at this time as to

whether the readings up in Central Park, which I think are at the northerly end of the park, have relation to what is going on at Pier 3.

MR. KLONSKY: I offer another weather bureau report on the same day taken at LaGuardia Airport.

THE COURT: All right. That is further away.

MR. KAIN: No objection.

MR. KLONSKY: Is that all right?

THE COURT: All right.

MR. KLONSKY: I know of no weather bureau report in Brooklyn, your Honor.

THE COURT: Well, you could use me. And I stick my hand out and if it is raining, I will announce it.

MR. KLONSKY: But you can't tell us what it was doing on July 3, 1967.

THE COURT: It was drizzling. The witness says so.

THE CLERK: So marked as Plaintiff's Exhibit 6 in evidence.

(So marked.)

BY MR. KLONSKY:

Q Now, Mr. Rodriguez, how many men were in the gang on that day?

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A Eighteen.

Q Break them up for me, would you?

A Well, there's eight in the hold. There's, I think, four on the stringpiece.

Q That is the dock?

A Right. Then, the deckmen.

Q Do you recall how many deckmen there were?

A I can't recall right now. I can't remember.

Q Well, there is a man who operated the winch; right?

A There's the winchman.

Q A signal man?

A Signal man.

Q And there is a relief man?

A There's a relief man, right.

Q Andyou were one of the eight who worked in the hold?

A That's right.

Q When you came to the vessel, did you know where you were to work, which hatch?

A No. I just followed the men.

Q Where did they go?

A They went straight to Hatch No. 2.

Q How did you get aboard the ship?

A Well, there is a -- kind of a stepladder that goes fromthe fish onto the stringpiece.

Q Would it be a gangway?

A A gangway, that's right.

Q And when you came to work, did you have any equipment?

A Well, I had my gloves and hooks.

Q Hooks or hook?

A Well, I had hooks. I always carry a set of coffee hooks, but I left them in the car.

Q At the time you came aborad the ship, what did you have?

A At the time I came aboard, I had a set of hooks and gloves.

Q Before you came aboard this ship, did you know what kind of cargo it had?

A Well, I knew it wasn't coffee because it wasn't one of the regular ships. Just by looking, it was a black ship. I knew it wasn't coffee.

Q Is it only on coffee that you use coffee hooks?

A Yes. The only time I go on board -- there is always hooks, most of the time.

THE COURT: What is the difference between coffee hooks and a cargo hook?

THE WITNESS: A coffee hook is a set of hooks so that you can use both hands to grip the coffee.

A cargo hook is a big hook just to catch or hold the cargo --

THE COURT: You hit into the wood with it?

THE WITNESS: That's it.

Q Which one did you have on this day?

A A cargo hook.

Q One hook?

A One hook.

Q Before you got down into the hold, did you know what the cargo was going to be?

A No, no. I just went down. As soon as I saw the reefer, I knew.

THE COURT: No, no.

Q Which deck level were you working at No. 2 hatch?

A The 'tween deck.

Q Would this be the upper 'tween deck?

A The upper 'tween deck, that's right.

Q And which side did you work on, the offshore or the inshore side?

A The offshore side.

Q And how many reefers were there, how many boxes?

A How many boxes?

THE COURT: Reefers, refrigerators.

A Oh. Well, all I know on my side, there was one.

Q That is the offshore side?

A That is my side, right.

Q How did you move these boxes?

A The cargo you're speaking about?

Q Yes.

A Well, we palletized the first and we got inside and -- well, I use gloves. The other fellows, I don't know what they used, but I use gloves because there is ice on it. The reefer was cold.

Q It was a freezer, in other words?

A Yes, it was.

Q And this was on July 3, 1967?

A That's right.

Q Would you carry these boxes out to the pallets?

A Well, some of them were awfully heavy when the ice is there. All you have to do is juggle them. You know, just push them over and over until they got to the pallets. Then there is some other men that handle them from there.

Q Now, the pallet itself, was this set in the square of the hatch?

A Not exactly. It was on the left side of the hatch where I am working off of.

Q I see. And there is another pallet to be loaded by the other gang on the other side of the hatch; is that right?

A I guess so. I can't remember. Right at this point, I don't remember if we were all working in that same reefer or if they were working on the other side.

Q But you were making up a pallet?

A That was me inside, making up a pallet.

Q And this pallet consists of strips of wood and then an edging and more strips of wood so that a hi-lo can put its forks underneath, if necessary?

THE COURT: What is the hi-lo?

THE WITNESS: The hi-lo is a vehicle that carries the tonnage of a cargo that comes off a ship. It is on a pallet. A pallet is some sort of a wooden base where this hi-lo can hook up the cargo.

THE COURT: A hi-lo first of all is like an automobile. It moves itself; is that right?

MR. KLONSKY: Well, it is operative.

THE WITNESS: The way I know it, it is just for cargo.

THE COURT: Never mind what it is for. Can it move itself? It has got wheels?

THE WITNESS: Well, you drive it. That's it. You handle it.

THE COURT: You don't push it?

THE WITNESS: No. But it doesn't wheel itself.

THE COURT: Well, you throw a lever and it moves?

THE WITNESS: There are other kinds of hi-los that we use on it. There is one that you use by hand.

THE COURT: I just asked is it an automobile in that regard, that it moves itself?

THE WITNESS: I will say yes. But there's two kinds of hi-los, the ones you move yourself --

THE COURT: I mean the ones that you had there that day?

THE WITNESS: That is the vehicle.

THE COURT: The one that moves itself.

MR. KLONSKY: That was on the dock, your Honor.

THE COURT: What?

MR.KLONSKY: That was on the dock. This

hi-lo that we are talking about.

Q Was there any in the hatch?

A No.

Q They were on the dock?

A That's right.

Q The pallets were so constructed that when the pallets get down on the dock the hi-lo gets its fork into it and lifts it?

A That's right.

MR. KAIN: Your Honor, Mr. Klonsky has been testifying and getting answers --

THE COURT: Well, he has had more experience with ships than the witness.

MR. KLONSKY: No, your Honor.

THE COURT: It is the critical moment, it being 4:30.

We will take a recess to tomorrow morning at 10 o'clock.

Heed the admonition I have given you about not discussing the case. Incidentally, it is not a proper subject for discussion at the dinner table tonight. Don't talk about it with the husband or wife. Stick with the operation that has been the subject of table talk for some time.

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Wait until the case is over before you discuss it. Don't make your husband or wife a twelfth juror.

Remember what I told you. Don't go to any of these places, don't go to Pier 3.

Above all, don't go into the hold of any ship to see how it works.

Good night.

(The jury leaves the jury box.)

THE CLERK: Trial will resume at 10 o'clock tomorrow morning.

MR. KLONSKY: Your Honor, may I inquire --

THE COURT: You know, a number of years ago I had a jury that was as green as this one, but the case went on for about four or five days, and by the time we were getting ready to sum up, one of the jurors asked the court: "Would you please tell counsel to move aft? He is in my way."

MR. KLONSKY: Does your Honor have any hearings tomorrow morning?

THE COURT: Yes, this case at 10 o'clock. Be here on time.

MR. KLONSKY: I say that because I come from

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Rockville Center. Anytime I could save on the road, I'd appreciate it.

THE COURT: Yes. Start a little earlier.

MR. KLONSKY: I started at a quarter to eight this morning. It was brutal.

THE COURT: Well, get here on time.

MR. KLONSKY: Yes. You have no hearings? That is why I inquired.

THE COURT: You be here. This is our case.

Are you referring to the sentence I had this morning?

MR. KLONSKY: Yes, your Honor.

THE COURT: Well, that was unexpected. I decided to do the sentencing so we could get him back on the West Coast in jail where he wants to be.

MR. COHEN: This can be off the record.

THE COURT: No. When you say off the record --

Off the record.

(Discussion off the record.)

MR. COHEN: Could I inquire of your Honor about your schedule for Friday morning?

Will you be on motions or this trial?

THE COURT: Well, I imagine we will continue

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with this trial. We won't have a full day.

Do we have a crowded calendar for Friday?

The reason I don't give you the complete information -- I will by Thursday. It looks a little heavy, doesn't it?

If I see that getting the use of part of Friday results for example in your being able to sum up to the jury on Monday, or something like that, I may find a couple of hours for you so that I can move on requests to charge and so on. Or if I have a free Friday altogether, as I have on the 26th, I will take practically a full day.

The calendar I have now is -- looks fairly heavy but it doesn't follow that it will be. You have got it running down here into Monday and Tuesday.

MR. KLONSKY: Your Honor, may I inquire --

THE COURT: Yes. I will speak to you early on Thursday if thatcan help you.

MR. COHEN: Fine.

THE COURT: I like to be close up to a date before I can make a final determination.

MR. KLONSKY: Can I call a doctor out of

turn?

THE COURT: Yes, of course. You don't mean later, you mean earlier?

MR. KLONSKY: No. I will have him tomorrow afternoon.

I don't know what stage we will be at with the plaintiff.

MR. KAIN: Is that Dr. Broward?

MR. KLONSKY: Yes.

THE COURT: Well, I will tell you what we should do. After you have sufficiently described the situation through the witness and given his direct medical -- you should have his medical complete -- then cross-examination will continue until the doctor arrives, and we can suspend further cross until the doctor has testified.

MR. KLONSKY: Thank you.

Do we have the hospital records yet?

THE CLERK: I will see if he has them downstairs.

MR.KLONSKY: We subpoenaed them.

THE COURT: Please don't recall that first witness.

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MR. KLONSKY: No. I didn't know he spoke so poorly.

MR. COHEN: We are sending him to night school so that we'll have him back tomorrow.

THE CLERK: They just came in.

MR. KLONSKY: All right.

THE COURT: How long do you think this case will take? Any idea, gentlemen? That is, to get it to the jury.

MR. KLONSKY: I have two or three doctors and one or two other witnesses.

THE COURT: Fact witnesses or what?

MR. KLONSKY: One of them will be on pensions and payroll. He should be very short. And the one who walked out on us this morning, we have a subpoena for him. He is a fact witness.

THE COURT: If you get him.

MR. KLONSKY: We have to get the subpoena over to him now.

MR. WOLF: He is a responsible fellow. I think he will be here.

THE COURT: Maybe if you made financial arrangements with him that were satisfactory --

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this is off the record --

(Discussion held off the record.)

(Trial adjourned to the following day at 10 a.m)

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

JOSEPH RODRIGUEZ, :

Plaintiff, :

- against - : 68 C 409

OLAF PETERSON REDERI, :
AMERICAN STEVEDORES,
A. M. CHRISTOPHER CO., :

Defendants. :

----------x

United States Courthouse
Brooklyn, New York

February 17, 1971
10:00 o'clock A.M.

B e f o r e :

HONORABLE GEORGE ROSLING,

U. S. D. J.

* * * *

HENRY SHAPIRO
ACTING OFFICIAL COURT REPORTER.

Appearances:

ROBERT KOLONSKY, ESQ.
Attorney for Plaintiff

WILLIAM P. KAIN, ESQ.
Attorney for Rederi .

JOSEPH A. COHEN, ESQ.
Attorney for American Stevedores

FERDINAND J. WOLF, ESQ.
Attorney for A. M. Christopher

* * * *

MR. COHEN: I have the citation I told you about yesterday, if you are interested.

MR. KOLONSKY: I am not aware of what the citation is about.

THE COURT: What is it about?

MR. COHEN: It is the case that you said you rather not know about. A plaintiff who does not make a claim against the third-party defendant may nonetheless obtain a recovery against that third-party defendant.

THE COURT: Call the case.

THE CLERK: Civil case on trial, Joseph Rodriguez vs. Olaf Peterson Rederi, American Stevedores and A. M. Christopher.

THE COURT: All counsel are present.

MR. KOLONSKY: I will have to find my client. He is coming in a little later. I don't know why.

THE COURT: You are referring to Mr. Rodriguez?

MR. KOLONSKY: Yes.

(Pause.)

MR. KOLONSKY: Your Honor, I apologize. My client is now here.

THE COURT: Call the case.

THE CLERK: Civil case on trial. Joseph Rodriguez vs. Olaf Peterson Rederi, American Stevedores and A. M. Christopher Co.

MR. KOLONSKY: Plaintiff ready.

THE COURT: All in attendance are present.

It has been brought to my attention, Mr. Kolonsky, by the Clerk that there is some witness here who claims to be ill, physically indisposed.

MR. KOLONSKY: The one we served the subpoena on last night, who has a Social Security appointment this afternoon.

THE COURT: It appears our timetable is such, with the witness on the stand and the doctor arriving this afternoon, that we may not be able to call this witness today.

MR. KOLONSKY: We may not have testimony this morning to cover the entire morning, depending on the cross-examination of the plaintiff.

THE COURT: He has to be --

MR. KOLONSKY: Somewhere at 1:00 o'clock.

THE COURT: Might it not be possible to call him now, withdrawing the witness that you have?

MR. KOLONSKY: As your Honor wishes.

THE COURT: What is your name?

MR. SCANNELLO: Mr. Joseph Scannello.

THE COURT: Suppose you do that, because the plaintiff will be a long witness, I take it, unless it throws your plan of action out.

MR. KOLONSKY: May it be subject to connection?

THE COURT: You will get your direct case in, I imagine.

MR. KOLONSKY: I hope so.

THE COURT: Then you could withdraw the plaintiff -- I am saying this all subject to objection on the part of the defendant, which I will consider when I hear it.

MR. KOLONSKY: Sure.

THE COURT: Do you want to call this witness out of turn?

MR. KOLONSKY: Yes.

THE COURT: That way we can be sure he keeps his appointment.

Bring the Jury in.

Is there any objection to withdrawal of the plaintiff? No defense counsel opposes.

(Jury enters the Courtroom.)

THE COURT: Gentlemen, we now have a problem. Juror No. 2 hasn't arrived yet. We will give him a few minutes and then we will decide what to do.

Good morning. May we have a side bar, gentlemen?

(The following took place at side bar, out of the hearing of the Jury.)

THE COURT: It is a quarter after 10:00 and the juror is missing.

My experience with the new type, that is, the $20 jurors, is that they are no better than the $8 ones and possibly considerably worse, because they are in it for what they can collect.

What is your pleasure? We are not going to keep the Court idle while we wait for a juror to arrive.

THE CLERK: She has the phone number of the party but there is no one answering the phone. She is usually late.

THE COURT: In the meantime, we will go ahead with 11 jurors -- not in the meantime.

MR. KOLONSKY: How about five more minutes?

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THE COURT: It is now a quarter after 10:00. I am not going to hold any further.

MR. KOLONSKY: Five minutes, your Honor.

THE COURT: No, we are going to go ahead. Is there any objection?

MR. KAIN: I prefer to wait.

THE COURT: All right. We will wait until twenty after.

(Five-minute recess.)

(The following took place in open Court.)

THE COURT: The Court discharges Juror No. 2, Marsha J. Miller, for failure to appear and to be excused.

The time is now twenty after 10:00. The Clerk is directed to hold this juror subject to the Court's further inquiry as to whether her absence is contemptuous and if so, what fine, penalty or imprisonment or both, should be imposed.

Call your first witness.

MR. KOLONSKY: Might we note that this witness is being called out of turn?

THE COURT: Yes. The other witness is being withdrawn to enable this witness to testify.

Swear the witness.

J O S E P H S A L V A T O R E S C A N N E L L O, called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

THE COURT: Gentlemen, the juror has arrived so possibly she arrived within the five minutes downstairs.

MR. KOLONSKY: I would suggest that she be seated.

THE COURT: Is that agreeable to all counsel?

MR. COHEN: Yes.

MR. KAIN: Yes.

THE COURT: All counsel agreeing, call in the juror.

(Juror No. 2 enters the Courtroom.)

THE COURT: Reswear the witness, please.

(Witness resworn by the Clerk of the Court, stated his address as 1490 East 48th Street, Brooklyn, New York.)

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. KOLONSKY:

Q Are you here pursuant to subpoena?

A Yes, sir.

Q On July 3, 1967, with whom were you employed?

A By Maintenance Company, A. M. Christopher Co., Inc., on 437 Hicks Street, Brooklyn, New York.

THE COURT: What is their name?

THE WITNESS: A. M. Christopher Co.

Q What was your job?

A I was maintenance foreman.

Q In other words, you were in charge of all the men that would be on a ship?

A That's right, cleaning men of this company.

Q How long had you been employed by this company before then?

A About 20 years with that. About 16 years at that time in 1967.

Q What is the nature of the work that this company does aboard ship?

A We do maintenance work on ships, cleaning holds, painting, tank work.

Q Were you told where to do this work?

A Yes.

Q By whom?

A We get orders from the port captain and then when I get up to the ship, I take orders from the mate.

Q So, where you go and what you do depends on what someone responsible to the ship, tells you?

A Yes.

Q On July 3, 1967, were you aboard the vessel?

A Yes.

Q Which one?

A Sunny Prince.

Q What time did you come to work?

A 8:00 o'clock in the morning.

Q How many men did you have with you?

A I had 12 men.

Q Did you check in with anybody before you went aboard the ship?

A Well, I checked with the port captain first, and then with the chief mate.

Q Do you know the name of the port captain?

A Captain Hazelton.

Q Do you know the name of the chief mate?

A No, sir.

Q What did Captain Hazelton tell you to do that morning?

MR. KAIN: Objection.

THE WITNESS: Well, he told me --

THE COURT: Just one moment. Who is the port captain with relation to these activities?

Q Do you know by whom --

THE COURT: I am asking you.

MR. KOLONSKY: He is employed by Grand Colombian a or the ship.

THE COURT: Do you know who employs the port captain?

THE WITNESS: Grand --

MR. KAIN: That isn't so.

THE COURT: Isn't that denied?

MR. KOLONSKY: He just told us that they were time charters.

THE COURT: I can't hear a word you are saying.

MR. KOLONSKY: They were agents for the ship --

THE COURT: Suppose we excuse the jury at this point.

(Jury leaves the Courtroom.)

THE COURT: Paragraph 4 of the complaint reads, "Upon information and belief that/at all the times

hereinafter mentioned, Grand Colombiana of No. 79 Pine Street, in the Borough of Manhattan, City and State of New York, was the general agent of the defendant duly authorized to act on its behalf in the State of New York." The defendant denies that.

MR. KOLONSKY: Interrogatory No. 27.

THE COURT: Just one moment, please. I don't know what happened to your voice today, but you seem to be gargling instead of speaking. I could hear even softer voices than yours.

MR. KOLONSKY: I had read 27 and 28.

THE COURT: I looked in my notes. You read 27, 28 and 29.

Was the ship under charter --

MR. KAIN: That is conceded.

THE COURT: The answer is yes. 28 says, "If the answer to the preceding interrogatory is in the affirmative, then state the name of such firm, person or persons."

Then B. Whether it was a time or mere boat charter. They said time. On the date of the accident, was the defendant the owner of the ship, and the answer was yes.

how does that take us closer to the question as to what orders the cleaning people got?

MR. KOLONSKY: The time charter is, I believe, has to do with the cargo and --

THE COURT: No, I think the time charter has to do with the ship.

MR. KOLONSKY: The ship and its cargo.

THE COURT: The whole ship. The ship is chartered for a time.

MR. KAIN: That does not make the time charter the agent of the owner. The only question is whether the activity is a non-delegable duty. Whose crew as aboard?

MR. KAIN: The ship owner. Captain Hazelton was not aboard nor is he an employee of the ship owner.

THE COURT: What was the nature of the instructions you got? I am addressing the witness.

THE WITNESS: Well, I had my orders from my office. We had men to go on the ship --

THE COURT: You said that the port captain told you to do something.

THE WITNESS: He told us where to start

the work.

THE COURT: Where were you supposed to start the work?

THE WITNESS: In Number 2 hold.

THE COURT: I will allow the answer to be given. You have an exception.

THE WITNESS: He told me --

THE COURT: That is enough.

MR. KAIN: May I note on the record, your Honor, that the ship cleaner was hired by the charter and not by the ship's owner.

THE COURT: I suppose so.

MR. KAIN: That is, as part of the basis for my objection.

THE COURT: I see.

(Jury enters the Courtroom.)

MR. KOLONSKY: Please read the last question and answer.

(Record read.)

MR. KOLONSKY: I will rephrase it.

BY MR. KOLONSKY:

Q What did the port captain say to you?

THE COURT: We have an objection to the question as to who the port captain was -- who

his employer was.

Do you know who the employer of the port captain was?

THE WITNESS: I don't know, probably --

THE COURT: All right. You will not, on that basis, be able to question further as to any statement made by the port captain.

MR. KOLONSKY: You say no, or yes?

THE COURT: He said no. He said he doesn't know who his employer was, probably or possibly.

BY MR. KOLONSKY:

Q After talking to this port captain, did you go aboard the ship?

A Yes, sir.

Q With your men?

A That's right.

Q Did you see any member of the ship crew to talk to after that?

A I talked with the mate.

Q What did he tell you?

A I told him --

MR. KAIN: Same objection.

THE WITNESS: I had some men --

THE COURT: What?

MR. KAIN: Same objection.

THE COURT: You said you spoke to the mate?

THE WITNESS: Yes.

THE COURT: The mate is a member of the ship's crew?

THE WITNESS: Yes.

THE COURT: Members of the Jury, we have a statement from defense counsel in your absence which I give to you now: That the ship's crew was part of the ship owner's crew. Am I correct about that?

MR. KAIN: That's correct. The ship is leased. It is leased with the officers and crew.

THE COURT: All right. You had a conversation with the mate?

THE WITNESS: Yes.

BY MR. KOLONSKY:

Q What did he say to you and what did you say to him?

THE COURT: Only concerning your duties.

THE WITNESS: I told him we were going to clean up the hatches.

THE COURT: He told you?

THE WITNESS: I told him I got orders to

clean up the hatches.

THE COURT: What did he say?

THE WITNESS: He said okay.

BY MR. KOLONSKY:

Q Did he direct you to any specific hatch?

A Well, I was told to go to Number 2 hatch.

Q When was that?

THE COURT: Who told you?

THE WITNESS: The port captain -- start with the Number 2 hatch.

THE COURT: Did you tell that to the mate or did you not?

THE WITNESS: That was the only place that I could go --

THE COURT: Why don't you just answer my question. You are a witness. I am the Judge. Answer the question. Don't put them.

The question is, did you tell that to the mate?

THE WITNESS: Yes, sir.

THE COURT: You told him you were going to Number 2 hatch?

THE WITNESS: Yes.

THE COURT: What did he say to that?

THE WITNESS: "Okay."

THE COURT: All right.

BY MR. KOLONSKY:

Q Then did you proceed with your men to the Number 2 hatch?

A Yes.

Q About what time of day was this?

A 8:00 o'clock in the morning.

THE COURT: Of July 3rd?

THE WITNESS: Yes.

Q When you got to this hatch were the longshoremen there?

A They came on board the same time we did.

Q I see.

THE COURT: That isn't the question.

When you got to the hatch were they already there?

THE WITNESS: Yes, sir.

Q And in what part of the Number 2 hatch did you and your men go to work?

A I started with the lower hold in the forward end.

THE COURT: Lower hold where?

THE WITNESS: Forward end.

THE COURT: Forward?

THE WITNESS: That's right.

MR. KOLONSKY:

Q At what level?

A The lower hold.

THE COURT: Of Hatch 2?

THE WITNESS: Yes, sir.

Q Would that be forward or aft of Number 2?

A This is forward.

Q Where were the longshoremen working?

A Aft.

Q At which deck level?

A They start in the hold.

THE COURT: The same level you were at?

THE WITNESS: Yes, sir.

Q Do you know what they were doing?

A Discharging cargo.

Q What kind?

A I don't remember exactly the type of cargo.

Q When you went to work at the lower hold -- Number 2 forward, what was the condition of the hatch of the upper tween deck level?

THE COURT: Read it to me. Maybe I could get it from you. I can't get it from counsel.

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(Question read.)

THE WITNESS: They took all the hatch covers and beams out to get to the lower hold.

THE COURT: Who took them out?

THE WITNESS: The stevedores.

THE COURT: It was uncovered?

THE WITNESS: That's right.

BY MR. KOLONSKY:

Q Completely uncovered?

A Yes, sir.

Q When you came to work that morning, was the main deck level covered or uncovered?

A It was covered when we came to work. The stevedores uncovered it to get down to the cargo.

Q You don't know what the nature of the cargo was?

A I don't remember. It was four years ago.

Q Do you recall reefer boxes in this hatch?

A Yes.

Q At which level were they?

A Upper tween deck.

Q In order to work discharging of cargo from the upper tween deck level, was it required --

MR. KAIN: I submit this witness testified

so far, they were working the lower hold.

I submit to your Honor, counsel's questions attempt to lead the witness.

THE COURT: Read back three or four questions and answers and please do not interrupt questions that you don't like. Wait until they are finished. The Court will interrupt if required. If I fail my duty, you have your rememdy.

Read three or four questions back without objection.

(Record read.)

Q (Continuing) -- that there be hatch boards in place at the after part of the Number 2 upper tween deck?

THE COURT: Do not answer.

MR. KAIN: Same objection, your Honor. I think in view of the witness's prior testimony --

THE COURT: Overruled. Read the question back to the witness.

(Question read.)

THE WITNESS: Well, to get at this upper tween deck reefer box, you have to put the beams back and hatch covers back. It is a locker.

THE COURT: The question is, all of it or part of it?

THE WITNESS: Half.

THE COURT: Half of it would be put back so you would have a floor?

THE WITNESS: That's right.

THE COURT: The reefer boxes are back there but the people have to work on that flooring?

THE WITNESS: Yes, sir.

BY MR. KOLONSKY:

Q For you to get down to the lower hold in the forward part of this hatch, you would need an opening in that area at the tween deck level; isn't that true?

A I would imagine there were two sets of ladders, forward and aft.

Q You imagine?

A I think.

THE COURT: The question is, would you need an opening?

THE WITNESS: Yes.

THE COURT: That's all. Just answer the question.

Q Now, what time did the cleaners finish working

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in the Number 2 hold that morning?

A Well, I finished the hatch about 11:00 o'clock -- 12:00 o'clock. The whole hatch was finished at 12:00 by me.

Q Did you and your men go up to the main deck after that?

A Yes, we covered it all up.

Q You covered what all up?

A The top hatch.

Q The main deck?

A Yes.

THE COURT: Who did the covering?

THE WITNESS: We did. A. M. Christopher & Company.

THE COURT: Your cleaning people, the Christopher people?

THE WITNESS: Yes.

THE COURT: Covered the main deck?

THE WITNESS: That's right.

THE COURT: When you were through cleaning?

THE WITNESS: The mate give me the orders to close it up.

THE COURT: The mate, the ship's employee?

THE WITNESS: Yes.

Q Did you do anything with the hatch covers

in the after part of Number 2 in the upper tween deck level?

A I was told to leave them on.

Q To do what?

THE COURT: Never mind. Strike that out. The Jury will disregard it. Just answer the question as put.

(Question read.)

THE WITNESS: No.

THE COURT: That is the first deck level below the main deck?

THE WITNESS: Yes.

THE COURT: What you are saying is that you covered the entire hatch area after you were through cleaning, and you did that under orders of the mate?

THE WITNESS: Yes.

THE COURT: But you did nothing about covering the uncovered half --

THE WITNESS: That's right.

THE COURT: (Continuing) -- of the tween deck? That's the level below the main deck?

THE WITNESS: Yes.

Q Is it your recollection, when you left the

hatch covers were off at the aft part --

THE COURT: Do not lead the witness.

Q When you left the hatch at about 11:00 A.M. that morning --

A 12:00 o'clock.

Q (Continuing) -- 12:00 o'clock, were the hatch covers on or off in the aft part of Number 2 upper bween deck?

A They were off.

Q And when you had covered the main deck level completely with your men, the longshoremen were out?

A Yes.

THE COURT: They were out of hatch 2?

THE WITNESS: Out of hatch 2, out of every level, that's right.

THE COURT: They had left before you did?

THE WITNESS: They had gone to another hatch, yes, sir.

THE COURT: Yourpeople left at what hour?

THE WITNESS: At 12:00 for lunch.

THE COURT: Before you left you did these things?

THE WITNESS: The mate gave me the okay and the hatch was finished.

BY MR. KOLONSKY:

Q Did the mate come to look at this area before you covered up the main deck level?

A Yes, sir.

THE COURT: In other words, he looked at the open hatch?

THE WITNESS: Yes, he gave me the okay.

THE COURT: To cover --

THE WITNESS: The hatch was clean, passed, and he told me to close the top.

Q Now, sir, with the main deck covered, was there any way to get into the hold itself?

A Well, you would have to take a couple of hatch covers off to get down below.

THE COURT: So your answer to the question, is there any way to get down with the main hatch covered, your answer is, "No"?

THE WITNESS: No.

THE COURT: You would have to remove it?

THE WITNESS: Yes.

Q Was there a time when you heard of an accident?

THE COURT: Just yes or no.

THE WITNESS: Yes.

Q Did you go to the scene of the accident?

A Yes.

Q What did you see?

THE COURT: Let's find out first where and when.

Q About what time did you go to the hatch to look at the scene of the accident?

A About 1:30.

THE COURT: 1:30 P.M.?

THE WITNESS: P.M.

THE COURT: Where was the scene of the accident?

Q Where was that?

A Number 2 lower hold.

Q What did you see?

A I seen the man in question there, laying down below.

THE COURT: Which man are you talking about?

THE WITNESS: Mr. Rodriguez.

THE COURT: He is here in Court?

THE WITNESS: Yes.

THE COURT: Indicating Mr. Rodriguez.

THE COURT: You saw him lying where?

THE WITNESS: Down in the lower hold.

Q Were you told of this accident by one of your

men?

A Yes.

Q Do you remember his name?

A Well, there was --

THE COURT: Just, do you remember his name?

THE WITNESS: Ecasio.

THE COURT: How do you spell it?

THE WITNESS: E-c-a-s-i-o. He related --

THE COURT: Never mind what he related.

Q Before you went back to the scene of the accident, had your men done any work in the Number 4 hatch?

A We were working alongside of the longshoremen in the Number 4, when this happened.

THE COURT: At 1:30 P.M., you were already working in Number 4?

THE WITNESS: Yes.

Q Do you recall what time you started working that day in Number 4?

A 1:00 O.M.

THE COURT: That's right after lunch?

THE WITNESS: Yes, sir.

Q Did you work alongside of them or in a different part of the hatch?

A Different part of the hatch. They were discharging.

THE COURT: They were discharging?

THE WITNESS: Cargo, yes.

Q Were you discharging debris?

A We were stacking dunnage.

THE COURT: What is that?

THE WITNESS: Lumber, to put cargo on.

THE COURT: Odd sizes?

THE WITNESS: Yes.

Q You used the ship's gear to remove the dunnage?

A Yes.

THE COURT: By "gear," you mean the ship's equipment? Hoist, winch?

THE WITNESS: Yes.

Q Now, at the time you came to the scene of the accident, were the hatch covers in an, part of the main deck removed?

THE COURT: You are talking about hatch 2?

THE WITNESS: They were not removed.

Q Where was the man located, if you know, who told you about this accident?

THE COURT: Make your question clear.

Are you asking where he and the man were when the

man told him that there had been an accident?

Q Where was the man at the time that he learned about the accident and told you about it?

THE COURT: Sustained. Next question.

Q Did you have men in the tween deck level of Number 2 or 3 at the time?

A No, sir.

Q In order to get this man out of Number 2 hatch, was it required to remove hatch covers?

A Well, they had to take hatch covers out to get him out.

Q Do you recall whether these hatch covers that were taken out were the forward or aft part?

A Aft.

THE COURT: That is the top deck?

THE WITNESS: Yes.

THE COURT: And you took out the back part?

THE WITNESS: We didn't take them out. The crew opened up --

THE COURT: To get him out?

THE WITNESS: Yes.

Q The ship's crew?

A Yes.

Q And they removed it on the aft end?

A Yes.

Q And that is where the reefer boxes were located?

A Yes.

Q How was he removed, do you recall?

A By winch with a basket.

THE COURT: He was removed?

THE WITNESS: Yes, sir.

Q Were you familiar with a means of getting from one hatch to another from the shelter deck --

THE COURT: May I make a suggestion? We are supposed to have a complete record of this trial. One thing we are not recording is your gestures and the Jury is seeing them all. Just keep them to your side and put your questions in English.

MR. KOLONSKY: I have no further questions.

THE COURT: Cross.

CROSS-EXAMINATION

BY MR. KAIN:

Q Mr. Scannello, on the day this accident happened, July 3, 1967, you were aboard to clean all hatches, all six?

A That's right.

Q Did you clean all six hatches that day?

A I think we wound up with about three.

THE COURT: You cleaned three?

THE WITNESS: Three out of six, I think. I am not sure, though.

Q When you got down to the pier that morning, what was the condition of the weather?

A I don't recall.

Q Might it have been raining at 8:00 o'clock when you got there?

A It started off as a bad day but then the sun came out.

Q Any question as to whether at 8:00 o'clock it might have been raining, or do you have any recollection as to the weather?

A I don't have any recollection.

Q So you don't know if it was raining or not?

A Yes.

THE COURT: What did you mean a moment ago when you said it was a bad day?

THE WITNESS: It started off as a cloudy day but then the sun came out.

THE COURT: But you don't remember if it was raining at 8:00 o'clock in the morning?

THE WITNESS: No.

Q The rain doesn't stop your cleaning operation?

A No, sir.

Q But the longshoremen don't usually work in the rain?

A They usually stop.

Q When you came on board to start work, did you say all the 12 men in your gang went to Number 2 hatch?

A That was my orders, yes, sir.

THE COURT: Did they all go there?

THE WITNESS: Yes, all 12.

Q And did you work continually at Number 2 hatch with these 12 men until that hatch was cleaned?

A Yes, sir.

Q So if I understand your testimony correctly, you started at approximately 8:00 o'clock in the morning, and you worked through until I think you said, you covered the hatch at noontime; is that correct?

A That's right.

Q Now, could you describe for me and for the ladies and gentlemen of the Jury and his Honor, could you tell us what work you did in this hatch? What did these 12 men do during this four-hour period?

A We stacked dunnage and picked up all the lumber and

cleaned up the hatch, wherever the cargo wasn't there we cleaned up.

THE COURT: The lumber was in the cargo?

THE WITNESS: No, stacking dunnage they call it.

THE COURT: That was for the purpose of keeping the cargo firm?

THE WITNESS: Yes, making a floor so they can go up high.

THE COURT: All right.

BY MR. KAIN:

Q When you got there at 8:00 o'clock, you told us the hatch was closed, was it?

A The stevedores started to open up at 8:00 o'clock.

THE COURT: You were there already?

THE WITNESS: Yes.

THE COURT: You saw them open up?

THE WITNESS: Yes.

Q If it had been raining, would they have opened up at 8:00 o'clock?

MR. KOLONSKY: I object.

THE WITNESS: No, sir.

THE COURT: Just one moment. Overruled. The answer will stand.

The practice is not to open up a hatch if it is raining?

THE WITNESS: That's right.

THE COURT: Water comes in?

THE WITNESS: That's right.

BY MR. KAIN:

Q Do you remember on this occasion when you got to this hatch at about 8:00 o'clock in the morning, was there a tarpaulin over this hatch, a piece of canvas?

THE COURT: Hatch 2?

Q (Continuing) Hatch 2.

A I don't remember.

Q Did you say your cleaning gang on occasion clean a hatch without opening it up entirely?

A Yes, with lights.

Q Sometimes you just take some lights down and open a view -- one section at one end of the hatch?

A Yes, sir.

Q That is not what you did on this occasion; is that correct?

A We worked without lights this day.

Q So you opened the whole hatch up?

A That's right.

Q Were you present when the longshoremen opened

up this hatch?

A I was there 8:00 o'clock in the morning.

Q So you were there when they opened it up?

A Yes, sir.

Q Now, did you hold your men topside or up on deck until the hatch had been opened up?

A That's right.

Q Was it necessary for the longshoremen to open the hatch all the way down to the lower hold?

A Well, they start out with the lower hold first and they gradually work their way up.

Q My question is, when they opened it, did they open it all, deck level down to the lower hold, or did they just take off the top?

A We went down to the lower hold.

Q They took the hatch beams and the hatch boards off on the main deck level, the top deck, they took the boards and beams out on the upper tween deck and they removed -- that is the boards and beams from the lower tween deck?

A Yes.

Q It was opened from the lower hold all the way up?

A That's right.

Q And is it your testimony that the longshoremen that morning started discharging cargo in Number 2 hatch from the Number 2 lower hold?

A I think so. I am not sure.

Q That is your recollection as you sit there now?

THE COURT: He said he is not sure.

Q Well, do you have any recollection of the longshoremen discharging cargo at any time in Number 2 hatch that day as you sit there now? Do you remember at any time longshoremen discharging cargo from a particular part of Number 2?

A They were discharging.

Q That is your recollection as you sit there now?

A Yes.

Q Did there come a time when your gang had finished cleaning the lower hold?

A Yes.

Q In the course of cleaning this lower hold, did you from time to time send a trash sling up to the main deck with debris from the hold?

A No.

Q What did you do?

A I waited until the stevedores finished and then I took the debris up.

Q That is from all deck levels?

A Yes.

THE COURT: That is still in hatch 2?

THE WITNESS: Still in hatch 2.

THE COURT: Now we have it that there are three levels of hatch covers to be removed to get access to the three storage places --

THE WITNESS: That's right.

THE COURT: (Continuing) -- underneath each of those levels. Upper tween deck, lower tween deck and the hold?

THE WITNESS: That's right.

THE COURT: Where were the reefer boxes?

THE WITNESS: Upper tween deck in the aft end.

THE COURT: That was the first level of storage space right below the main deck of the ship?

THE WITNESS: Yes.

BY MR. KAIN:

Q Could you tell me what type of equipment you used in removing debris from the hatch, Number 2, on

the day of the accident?

A We had a canvas net. We had a rope sling, brooms, shovels.

Q Let's take the lower hold. Do you have any recollection of the type of debris or materials that you cleaned in the Number 2 lower hold?

A Would you say that again?

MR. KAIN: Would you read the question back, please?

(Question read.)

THE COURT: That is the lowest level.

THE WITNESS: The debris was dunnage, broken pieces of wood. I think paper.

THE COURT: What was that?

THE WITNESS: Paper.

THE COURT: Dunnage, paper, all kinds of debris.

Q Was there dunnage boards that you removed, too, or just paper?

A Small broken pieces of dunnage.

Q What did you use to remove this -- these broken pieces of dunnage?

A I think a rope or a net sling.

Q As I understand your prior testimony, you

say your men, after they swept it up, they put it in slings?

A In a canvas net.

Q That is like a canvas bag?

A That's right.

Q You put it to one side?

A We put it on deck.

Q Where on deck?

A We gathered it in the hold and picked it up with the winchand put it on deck.

THE COURT: The top deck?

THE WITNESS: Yes.

Q Did you do this before you went to the lower tween deck and started working?

A While the stevedores were working up on the tween deck, I had to work below so I did all the cleaning and when the stevedores got out, I gathered all the dirt up and took it up.

Q When you finished the lower hold and you put all of this debris that you collected in this canvas bag or sling, did you leave it there and to up to the lower tween deck and clean that deck up?

A Yes, I left it there and went to the next deck.

Q Did you follow the same procedure in the

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lower tween deck?

A That's right.

Q Then you waited, when the longshoremen had left the hatch, you did the upper tween deck?

A That's right.

Q Is that correct? If you remember, what was the condition of the hatch square in the upper tween deck by the time the longshoremen left? Was it covered, uncovered?

A It was covered.

Q Do you remember when the long --

THE COURT: Was it covered before the longshoremen left?

THE WITNESS: Yes, sir.

Q Do you remember the time they left?

A Approximately 11:00 o'clock.

Q When they left at 11:00 o'clock, was this upper tween deck square -- this hatch square -- this open part, was it partly covered or entirely?

A Entirely.

THE COURT: Which level deck is that?

THE WITNESS: The upper tween deck.

First you have the main deck, this is the upper tween deck. Between the main deck and the upper

tween deck, that is where the reefers are --

THE COURT: The refrigerators are aft?

THE WITNESS: Yes.

THE COURT: When they left --

THE WITNESS: The hatch boards were in.

THE COURT: The hatch boards of the floor of that upper tween deck were all in?

THE WITNESS: Yes.

Q Was the same thing true in -- you know -- of the lower hold at the time the longshoremen left?

THE COURT: Suppose you tell him what the "true," means?

Q Was the hatch square leading from the lower tween deck to the lower hold with the hatch boards in place -- was that hatch covered?

A I don't remember.

Q When the longshoremen left, was the hatch square on the top deck, the main deck, completely open?

A Was completely closed by the ladders -- by the escape hatch.

Q The hatch square was completely closed?

A But two hatch boards with the ladder down below.

THE COURT: What are you referring to, at what time?

THE WITNESS: Before the stevedores left.

THE COURT: Left where?

THE WITNESS: The hatch.

THE COURT: Were they still in the --

THE WITNESS: My men were still down below.

THE COURT: No, the stevedores, the longshoremen, were they still in the upper tween deck?

THE WITNESS: No, he asked me what they did.

THE COURT: I am trying to find out where they were.

THE WITNESS: They were on the main deck.

THE COURT: Is that your question?

MR. KAIN: No, your Honor. My question was at the time you said you worked there, after the longshorement left --

THE WITNESS: Yes.

MR. KAIN: -- and at the time the longshoremen left the hatch, when they finished working and left --

THE COURT: They got out of the hatch and up on to the main deck, is that the point?

MR. KAIN: Yes.

Q If you remember, at the time they left the hatch, went away from the hatch, was the hatch square on the upper deck, the main deck, the weather deck, was that covered or open?

A It was covered, but for two hatch covers by the ladder.

Q Two hatch covers adjacent to the ladder?

A I asked them to leave it open because my men were below.

Q Who covered, if you know, this hatch that morning? Who put them back on? You said it was opened up when you started to work. Who put the hatch covers and beams in place?

THE COURT: That is all except the two places by the ladder?

THE WITNESS: Yes. The stevedores.

Q You mean the longshoremen working in the hold?

A That's right.

THE COURT: They put down the main deck, except for two little places by the ladder, because you had men working underneath. The stevedores were gone?

THE WITNESS: Yes.

Q So if I understand you correctly, the longshoremen put the beam back on the tween deck level and the upper deck level?

A Correct.

Q And they laid the hatch boards back to the tween deck level and put them back on the main deck level except for two hatch boards you asked them to leave out adjacent to the ladder, so your men would have access to and from the hold?

A That's right.

Q In removing debris from the hatch or from the hatches that you had cleaned aboard the ship, I believe you said, on direct, the ship's winches were used to lift this debris out?

A Yes.

Q Who operated the ship's winches, removing this debris for you?

A Well, I operated it at one time and my other foreman operated it another time.

THE COURT: Before we get too deeply in this, the word "winch" has been mentioned a number of times. What is it and where is it located?

THE WITNESS: It is located on the aft end of the ship.

THE COURT: On the main deck?

THE WITNESS: That is for handling cargo, put it in and out of the hatch.

THE COURT: What does it do? Is it like a cylinder --

THE WITNESS: A big cylinder and a big cable.

THE COURT: The cable runs up to the boom and down over the top?

THE WITNESS: That's right.

THE COURT: The man who operates the boom --

THE WITNESS: He's called the winch man.

THE COURT: And he causes -- by this winch, he causes the boom to rise or fall?

THE WITNESS: The cable.

THE COURT: You say the one who operated the winch was either yo or your men?

THE WITNESS: Yes.

THE COURT: Cleaning men?

THE WITNESS: Yes.

Q You finished there, if I recall your testimony correctly, you finished at approximately noontime, cleaning

this hatch?

A Yes.

Q Then you and -- when you say 12 men in your gang, was that 11 men plus you, or 12 men plus you?

A 12 men plus myself.

THE COURT: Let me ask -- or make something clear. When you testified a moment ago that either you or your men were operating the winch, that was for the purpose of removing the debris, it had nothing to do with removing the stuff the longshoremen were removing?

THE WITNESS: No, they had their own.

THE COURT: Was the same winch used?

THE WITNESS: Yes, they handled cargo. We are not allowed to touch cargo.

Q You ship's cleaners are not allowed to put beams back?

A We always did.

Q Did you on this ship?

A I had to take -- remove these hatch covers to the upper tween deck to get down at the debris.

THE COURT: You are not answering the question.

Q I am talking about hatch beams --

THE COURT: Just a moment. You were asked specifically, did you, in putting back any part of the hatch covers, use the winches?

THE WITNESS: Not to put the hatch covers back, no, sir.

THE COURT: How did you do that, by hand?

THE WITNESS: By hand.

MR. KOLONSKY: I think there was also reference to beams in the question.

MR. KAIN: Your Honor, may I continue?

THE COURT: We will consider that putting hatch covers back would include putting back that which support the hatch covers, namely, the beams.

Q Mr. Scannello, when the longshoremen you say covered this Number 2 hatch, at main deck, in the upper tween deck level, they had to put back the hatch beams before they could put in the hatch boards?

A That's right.

THE COURT: How big are these hatch boards?

THE WITNESS: Well, some of then come about eight, ten foot long. Some six foot long.

THE COURT: How big is the spread that they

have to cover?

THE WITNESS: They spread about two feet.

THE COURT: The width of the hatch?

THE WITNESS: 20, 30 feet.

THE COURT: And the length?

THE WITNESS: Yes.

THE COURT: They couldn't reach across? You put beams across on which the pieces rest?

THE WITNESS: Yes.

Q When the longshoremen did this, neither you or any other ship cleaner operated the winches for these beams?

A No, that's right.

Q Now, when you came back from lunch, did you and the 12 men in your gang all go to Number 4 hatch?

A That's right.

Q And you worked in this hatch, did you, while the longshoremen were working the hatch?

A That's right.

Q Did you start working in Number 4 hatch at approximately 1:00 o'clock?

A That's right.

Q What work were you doing in Number 4 hatch?

A Cleaning out the debris, stacking dunnage.

Q Was any portion of this debris moved to the dock as you cleaned it up?

A After the stevedores got out we took it out.

Q Do you remember when the stevedores got out?

A I don't remember what time.

THE COURT: After the stevedores got out, in the removing of the debris, you started to use the winch because you had to hoist it up --

THE WITNESS: We are not allowed to touch it while they are working the hatch.

THE COURT: In Hatch 4, can you give us the levels?

THE WITNESS: One tween deck and the holds.

THE COURT: First, there is the main deck?

THE WITNESS: Then the tween deck and the lower hold.

THE COURT: It has three levels of the decks and underneath three storage spaces?

THE WITNESS: Two storage spaces underneath.

THE COURT: There is space under the main deck?

THE WITNESS: And you have the hold below that, so there is two.

THE COURT: So there are two hatch covers, the main deck and the lower hold --

THE WITNESS: Lower tween.

MR. KOLONSKY: There was only one tween deck?

THE WITNESS: Yes.

THE COURT: That would be the tween deck between the --

THE WITNESS: The lower tween deck.

THE COURT: Underneath the lower tween was the --

THE WITNESS: Lower hold.

THE COURT: So there is only two spaces. There are three at the Number 2?

THE WITNESS: It is a bigger hatch.

Q Do you remember what time the longshoremen finished working Number 4 hatch that day?

A I think they finished around close to 5:00.

Q Close to 5:00?

A I am not sure. I think about 5:00.

Q Was it before or after 5:00 o'clock when the longshoremen finished, that your gang finished? Had you finished before they had or after?

A After they had.

Q And in the period between 1:00 o'clock in the afternoon and 5:00 o'clock that evening, when you say the longshoremen -- the approximate time the longshoremen finished, did your gang work anywhere on that ship but Number 4 hatch?

A I don't recall.

THE COURT: You said you worked in three hatches out of the six?

THE WITNESS: I think we did.

THE COURT: Do you know which was the third one?

THE WITNESS: I am not sure of the third one.

THE COURT: How do these hatches run? Number 1 is nearest the bow?

THE WITNESS: The bow is "1" and you go back aft.

THE COURT: To six?

THE WITNESS: Yes.

THE COURT: You have a mast housing in between.

Q Wasn't this gang of 13 men an unusually large gang for cleaning one hatch?

A Well, it depends on the condition of the hatch. It

could be clean and it could be dirty, if you have a lot of dunnage, you need a lot of men.

Q Is it the usual practice in your experience for you to clean a hatch with 12 men in a gang?

A There's times that I went with 20 men.

Q That's not what I am asking you. I am asking you, isn't it unusual? I am not asking you, do you do it occasionally. Is it usual to have that many men cleaning a hatch --

A I can't answer because --

THE COURT: Never mind the "because."

THE WITNESS: We have orders --

THE COURT: No, no. You have answered already.

Q Would you say you worked with 10 or 12 men in a cleaning gang more often than you worked with three or four men?

A 10 or 12 men oftener.

THE COURT: More often?

THE WITNESS: Yes.

Q That's cleaning one individual hatch?

A Yes.

Q Do you have any recollection when your gang started working that day?

A I think we got off at about 6:00 o'clock.

Q You did not work the next day, July 4th?

A Not on that ship, no, sir.

Q You worked July 5th, do you remember?

THE COURT: You are talking about this ship?

MR. KAIN: Yes.

THE WITNESS: No, that ship went off hire that same day.

THE COURT: What does that mean?

THE WITNESS: They gave it back to the owners. They are finished with the ship and the owners take it back.

THE COURT: In other words, Colombiana gave it back the same day.

THE WITNESS: That was my purpose of cleaning up the hatch so they could get it back clean.

THE COURT: The ship has to be returned broom clean?

THE WITNESS: Yes.

Q Well, is it your testimony that as you sit here, your recollection is that you cleaned Number 2 and Number 4 and possibly another hatch that day?

A I told you I am not sure about the other hatch.

Q Were you told when you went to work that morning that the ship was going off hire that day?

A Yes.

Q And who gave you that information?

A Captain Hazelton at Franklin Yard.

THE COURT: Who?

THE WITNESS: Captain Hazelton.

Q Grand Colombiana's port captain?

A Yes.

Q Is it possible that you might have cleaned all six hatches that day?

A This happened four years, I can't give you a specific --

Q I understand that. Is it possible that you might?

A It might be possible, I have had a million ships in between that time.

Q While you were aboard that ship that day, did anybody, to your knowledge, come on board to inspect the various hatches on that ship to make sure they were cleaned before the ship went off hire?

A Yes, the chief mate.

Q Did anybody come on board -- I am not talking about the people on board. If you know, did any person

come on board, not a member of the ships crew, go around and inspect --

A Well, the port captain came up a couple of times to see what was what.

Q If you know, did he inspect the ship's hatches to see if they were clean before they went off hire?

A Yes.

Q And, if you know, did the chief mate make such an inspection?

A Yes, sir.

Q Do you know if anybody else made such an inspection, anybody other than the port captain from Grand Colombiana and the chief mate of the vessel?

A No, sir.

Q Now, at the time you were told that there had been an accident aboard the ship, where on the ship were you?

A I was on the main deck by Number 4.

Q On the main deck. Were you working on the main deck or did you just happen to be there?

A I was foreman and watched my men working.

Q You were, in other words, if I understand you correctly, you were checking the men working in Number 4?

A That's right.

Q When you were told about this, what, if anything, did you do?

A About what?

Q That there had been an accident.

THE COURT: Just what did you do, not what you said?

THE WITNESS: Well, I didn't --

THE COURT: Did you go somewheres?

THE WITNESS: I didn't know what to do --

THE COURT: What did you do? You are here now, so you must have done something.

THE WITNESS: Somebody said they heard a scream.

Q That is not my question. When you were told about this, what, if anything, did you do, not what someone told you?

A I opened the next hatch.

THE COURT: Which hatch is that?

THE WITNESS: Number 3.

THE COURT: He says he opened up the Number 3 hatch. How?

THE WITNESS: We took up a couple of hatch covers.

THE COURT: Just a couple?

THE WITNESS: Yes, to look down below.

THE COURT: A couple of this five or eight foot boards?

THE WITNESS: Yes, to look down below because they told me they heard --

THE COURT: Never mind.

Q Had you been in Number 3 hatch prior to your opening it up?

A No, sir.

Q When you say "we opened up Number 3," who is "we"? Who opened it up with you?

In other words, who assisted you?

A A couple of my men, Kikoscio and another fellow by the name of Torroto.

Q When you opened up Number 3 hatch, was it dark?

A Well, we opened it so we could see down below.

Q You opened up Number 3. You opened it at the main deck level?

A Yes, I opened it up enough to see down below about two or three hatches -- the main deck.

THE COURT: When you said two or three hatches, what did you mean?

THE WITNESS: You have a row of hatch covers so you take 10 or 12 hatch covers off so you could see right down below.

THE COURT: You used the words "two or three hatches."

THE WITNESS: Hatch covers. We take a couple off at the end.

THE COURT: You used the words "two or three." What were you referring to?

THE WITNESS: If you take one hatch cover off, it is not enough. If you take three, you see a little better.

THE COURT: Where did you take them off?

THE WITNESS: On the main deck.

THE COURT: Not on the intermediate decks?

THE WITNESS: No

Q When you say "hatch covers," you mean hatch boards?

A Yes, they call them boards and covers, the same thing.

THE COURT: The whole thing is the hatch cover. Some call them boards.

Q If you remember, at the time you took these two or three hatch boards off Number 3 at the main deck

level, after you heard about this accident, did you have to take off a canvas cover before you had to take off --

A I didn't. There was an accident. They told me they heard a scream.

Q All right. At the time you were told that someone heard a scream, when you opened up Number 2 to take these two or three boards off, did you have to take a piece of canvas off?

A Yes. There was tarpaulin off.

THE COURT: That is hatch Number 3?

THE WITNESS: Yes.

Q You took off two or three of these hatch boards?

A Yes.

Q And then you had daylight that went down into this hatch?

A Yes.

Q And you could see down into it?

A That's right.

Q Now, at that point, was the upper tween deck level of Number 3 hatch covered?

A It was open.

THE COURT: In other words, the hatch cover was not covering the first deck below the main deck?

THE WITNESS: It was open. I remember there were tanks down below and the covers were off.

MR. KOLONSKY: I do not understand whether they were open on the main deck level --

THE COURT: You will have a chance on cross-examination. If you have an objection you may interpose it.

MR. KOLONSKY: I object on the ground they have not clarified where these covers were removed.

THE COURT: Overruled.

Q If you know, was Number 3 hatch, when you took out these two or three boards at the very top level, was the rest open all the way down?

A Yes.

Q You didn't see anything in Number 3?

A That's right.

Q Would you tell me what you did then?

A Well, these two men and myself, we ran to Number 2, that is forward of the house, number 2, and we opened up a couple of hatch covers there.

THE COURT: Hatch boards?

THE WITNESS: Boards.

Q When you got to number 2 hatch, did you have to take canvas off that hatch?

A Yes.

Q Where did you take out the hatch boards, at what point in the hatch opening?

A We took the end covers off.

THE COURT: Number 2?

THE WITNESS: Number 2.

Q When you say the end covers, do you mean inshore or offshore?

A Inshore side next to the hatch coaming all around.

Q At the aft end?

A Along the side.

THE COURT: Let's get the words "hatch coaming" defined.

THE WITNESS: Hatch coaming is a steel rim around the top of the hatch. It is about three or four foot high. That protects the men from falling down into the hatch.

THE COURT: It is like a raised bulkhead around the hatch opening?

THE WITNESS: That protects the men from falling down.

Q These two hatch boards you took out of Number 2, you took them out on the insure side?

A Yes.

Q The after part of the --

A The aft part.

Q When you took them out, what did you see?

A We seen this man laying down in the lower hold -- we seen this man Rodriguez laying down in the lower hold of Number 2.

Q Did you go down into Number 2 lower hold?

A No, sir.

Q When you opened it up, was there anyone else that you saw down in Number 2 other than Mr. Rodriguez?

A No, sir.

Q Did there come a time when someone did go down into Number 2?

A Yes.

Q Do you know who went down?

A Well, we informed the chief mate and he went down.

Q Did anyone go down with him?

A I think he got a couple of the crew to go down with him.

Q How long after you opened up this number 2 hatch and saw Mr. Rodriguez, about how long after that was it that this mate went down?

A He went right down.

Q Just about the time you opened it up?

A No, a few minutes after that, about two or three minutes later.

Q Did there come a time when Mr. Rodrigez was thereafter removed from the lower hold?

A Yes.

Q How long after you opened it, approximately, was he removed?

A Well, they took him right out.

Q I think you said a few minutes ago, on direct examination, that they used a wire basket stretcher.

A That's right.

Q How did they get the wire basket stretcher out, can you tell me?

A With the winch.

Q Did they attach the wire basket stretcher directly to the cargo hook?

A That's right.

Q They didn't put a pallet or anything under it?

A You don't need a pallet.

Q That's not my question.

Did they put one underneath it?

A No, sir.

Q They just brought this basket stretcher up

suspended from the cargo hook?

A Yes.

THE COURT: The stretcher is like a pallet?

THE WITNESS: No, a pallet is something they put cargo but a stretcher is a long thing, about two feet wide. It is wire mesh.

THE COURT: Is it rigged?

THE WITNESS: Yes.

THE COURT: To that extent it is like a pallet?

THE WITNESS: It might be.

THE COURT: He isn't folded over?

THE WITNESS: No.

Q When Mr. Rodriguez was brought out from the hatch, was he placed over to the pier?

A Yes, they called the ambulance.

Q He was taken on over to the pier?

A Yes.

Q Then what did you do? Did you recover Number 2?

A I was finished with that hatch.

Q I say, did you put the two boards back that you took off?

A No, sir. I had no business there.

Q How about Number 3? Did you recover that?

A I might have recovered Number 3. I put the two hatch covers back.

THE COURT: Two hatch boards?

THE WITNESS: Yes, I'm sorry.

Q You went back to Number 4 then, is that right?

A That's right.

Q And resumed work?

A That's right.

MR. KAIN: No further questions.

THE COURT: Mr. Cohen.

MR. COHEN: Yes, sir.

CROSS-EXAMINATION

BY MR. COHEN:

Q Mr. Scannello, I just want to ask you a few questions, all referring to the Number 2 hatch where the accident happened.

The longshoremen, as I understand it, finished discharging the cargo from the upper tween deck of the number 2 hatch at about 11:00 o'clock, you said?

A Yes, sir.

Q All right.

Then they were done taking the cargo out of that hatch at that time?

A That's right.

Q Since they were done with their work in that hatch, they then left the upper tween deck and went to the main deck?

A That's true.

Q When the longshoremen left the Number 2 upper tween deck, I believe, you testified that all the hatch boards were in place on that deck level?

A That's true.

Q Now, thereafter, did you and your men take some of those hatch covers aoff the Number 2 upper tween deck?

A We had to take them off.

THE COURT: That is not the question.

Read the question back to the witness.

(Question read.)

Q How many did you and your men -- how many hatch boards did you and your men remove from the Number 2 upper tween deck, after the longshoremen had left the hatch?

A We took them all off.

Q All o[illegible]

That was in order to do your work, after the longshoremen had finished theirs?

A That's right.

Q When you finished your work in the hatch, did you and your men replace any of those hatch boards in the

Number 2 upper tween deck?

A No.

Q You left that hatch entirely open on that deck?

A On that deck.

Q Did you report to anyone that you had left that upper tween deck hatch level open?

A Yes.

Q To whom?

A To the chief mate.

Q Now --

THE COURT: Just a moment.

Before you got word of the accident or after?

THE WITNESS: Before.

THE COURT: At what time?

THE WITNESS: About a quarter to 12:00.

THE COURT: In other words, you reported to the chief mate that you had left, at hatch Number 2 at the upper tween deck --

THE WITNESS: He told me to leave the covers out, because they're going to --

THE COURT: Just a moment.

You say you reported it to the Chief Mate. What did you report to him?

THE WITNESS: That the hatch was finished and if he wanted the covers back and he says, "No."

THE COURT: What time was it when you spoke to the mate?

THE WITNESS: About 11:30.

MR. COHEN: May I continue, your Honor?

THE COURT: Yes.

BY MR. COHEN:

Q Mr. Scannello, do I understand -- in response to his Honor's question -- that you asked the chief mate of the ship whether or not he wanted your men to replace the hatch boards that you had taken off at the Number 2 upper tween deck?

A Yes.

Q What did he advise you?

A Not to put them back.

Q Now, I want to talk to you about the condition on the main deck when the longshoremen finished with their work at the Number 2 hatch.

I believe that you testified that they covered up the main deck, except for a couple of sections that you needed for you men to do their work.

A That's right.

Q And, approximately, how large an area was left open on the main deck by the longshoremen, when they left hatch Number 2?

A Well, they left two hatch boards open.

Q Was that enough space for you to operate the winch and to bring up from the hatch?

A No, it wasn't.

Q So you opened the main deck even more; is that correct?

A I got my men out and we opened up some more.

Q How much did you open up on the main deck?

A I stripped on section.

Q How large an area is that?

A The width of the hatch is about 20, 25 feet --

THE COURT: How much did you open up?

THE WITNESS: The whole section.

Q A 20 to 25 foot width?

A Yes.

Q How long fore and aft would that be?

A The width was about eight foot.

Q Eight feet fore and aft, by about 20 to 25 feet?

A Yes.

Q It was through that space that you discharged the material that you had to discharge?

A That's true.

THE COURT: You had to lower this cable down to hoist the stuff up?

THE WITNESS: Yes.

THE COURT: The couple of boards left open by the longshoremen, that was not enough?

THE WITNESS: That's right.

Q How much space had the longshoremen left on that main deck, before you increased it?

A Well, about three feet -- I guess, three or four feet.

Q That was in the area by the ladder; is that right?

A Yes.

Q So a person would have access to the ladder; is that right?

A Yes.

Q Was that the aft ladder or the forward ladder?

A The after ladder.

Q And when you opened up even more, you opened up at the aft end also, in the vicinity of that aft ladder?

A Yes, one section.

Q Now, after you were done with your work in the Number 2 hatch, did you then close up the entire main

deck --

A Yes --

Q (Continuing) -- putting all the hatch boards in place?

A Yes.

Q Did you have any discussion with any ship's officer relating toyour doing that work?

A Yes, told me to do it.

Q Who did you have a discussion with?

A The chief mate.

Q Did he tell you to put all of the hatch boards in place on the main deck?

A Yes.

Q Is that the same man that you said told you not to put any back on the upper tween deck?

A Yes.

Q Did you have one discussion with him or two separate discussions about those two decks?

A One.

Q In that one discussion, he said, "Leave the entire tween deck open and cover the entire main deck"?

A Yes.

Q And you finished all that work and you left at about 12:00 noon for lunch?

A Yes.

Q That's the traditional lunch hour for people that work on the waterfront?

A Yes.

Q When you came back after lunch, you went immediately to the Number 4 hatch?

A Yes.

MR. COHEN: Thank you.

THE COURT: Mr. Wolf?

MR. WOLF: No questions.

(Continued on next page.)

THE COURT: Any redirect examination?

MR. KOLONSKY: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. KOLONSKY:

Q Do I understand that you did not discharge any debris until the longshoremen had left?

A That's right.

Q You worked at a different area of Hatch No. 2 than where the longshoremen worked?

A That's true.

Q As they came up from the lower hold to the level above -- at the level above you followed them with your cleaning crew?

A Yes.

Q When they finally got to the upper 'tween deck there was a flooring that had to be placed there for them to work in the aft end?

A Yes.

Q When they left did you go there and clean up there?

A Yes.

Q So you had come from the forward portion of that hatch to the aft portion at the time you were just about ready to leave; is that true?

A True.

Q You wanted the light -- the opening to be at the aft ladder because that's where you last worked?

A Yes.

Q That was with the hatch covers in place --

MR. KAIN: May I object to counsel leading.

THE COURT: You are cutting into the question; do not do that.

Read back three or four questions and answers so we can pick up the continuity.

(Record read.)

THE COURT: You may, of course, cut into the answer immediately. Interpose your objection to the question but do not usurp the function of the Court by deciding how much of the question the Jury will hear.

Let me tell you something about the stenotype procedure not generally known to judges.

You have a rather loud voice, Mr. Kain, and a Reporter does the best he can. He writes with both hands but he only takes down the voice that he hears. When you are cutting

into a question the Jury may well hear the rest of the question but the Reporter does not get it on the record. He gets your bellow instead.

So, in order to make a complete record, you have to wait until the question has been completed, then we will do the best we can.

Usually, I would cut into a question if I think an objection would be sustained if one were interposed.

The objection is overruled.

Is that your complete question?

REDIRECT EXAMINATION

BY MR. KOLONSKY (Cont.):

Q The hatch covers replaced?

A Yes.

Q Now, is it true that while the men working for the stevedore --

THE COURT: "Is it true," means you are going to come forward with a leading question and that is -- leading questions are proper on redirect but the leading question has to be one that has its basis in something that has been testified to on cross-examination

to which you are attracting the witness' attention.

You are not doing that at the moment.

So I will sustain the objection.

BY MR. KOLONSKY:

Q At the time the longshoremen were working at the upper 'tween deck level near the reefer boxes, were you and your men at a lower level forward of No. 2?

A Yes.

Q And if you are at a lower level forward of No. 2 was there a section or sections of forward hatch covers off at the No. 2 upper 'tween deck level?

A I think the sections were out.

Q They were out?

A The hatch boards.

Q There wasn't a complete floor at the upper 'tween deck while the longshoremen were working at the upper 'tween deck?

A It was half a deck.

Q Half was covered aft and half was covered forward?

A True.

MR. KAIN: May I note my objection on the record to the line of questioning as leading.

THE COURT: I will overrule your objection. I won't note your objection. The Reporter will record it as part of the statement that you have made which must be recorded.

I will not permit an objection to be made to a line of questions nor will I permit an objection to be interposed unless requested and I rule in favor when the question has already been answered, not quickly, but sometime back.

BY MR. KOLONSKY:

Q Now, sir, was there a safety net at the edge covers that were in place?

A Yes, sir.

Q When you got --

THE COURT: Just a moment.

How is a safety net rigged?

THE WITNESS: Like a fish net running across the hatch.

Q When you got to the upper 'tween deck level aft, where the longshoremen had worked, was the safety net still in place?

A No.

Q Did anyone cover up the other half of the

hatch boards at the upper 'tween deck level?

A No, sir.

Q Now, when you got to the upper 'tween deck aft you had to discharge debris through the main deck in that area, too, did you not?

A Yes, sir.

Q Didn't they leave the main deck open for you there?

A Two hatch boards.

Q You say, just for access to the ladder?

A That's right, true.

Q You had to remove debris by winch and boom?

A I had to get my men up to open the hatch so I could take out the debris.

Q After the longshoremen had covered up, except for two boards, your men had gone up to remove more?

A Yes.

Q Did you cover up?

A Yes.

Q Was that after you spoke to the mate?

A Yes, sir.

Q He told you to do it?

A Yes.

Q Were you at the No. 2 upper 'tween deck aft

when the cleaners first went there from another portion of the hatch, you personally?

THE COURT: Read the question back, please.

(Record read.)

THE WITNESS: Yes.

Q Did you see the area cleaned before you left?

A Yes.

THE COURT: What was the condition of the area before you left?

THE WITNESS: Which area?

Q The upper 'tween deck end.

A The upper 'tween deck was cleaned when I got out.

THE COURT: All right.

Q That was after the longshoremen had left?

A After they left I cleaned up, then get out of the hatch. Finished at 12:00 o'clock.

Q Did you see any cargo then?

A There was no cargo. They finished.

Q When you worked at this upper 'tween deck, did you need artificial light or did it come from above?

A There was plenty of sunlight.

Q I see.

THE COURT: Anything further?

MR. KOLONSKY: No.

THE COURT: Recross?

RECROSS EXAMINATION

BY MR. KAIN:

Q Mr. Scannello, there seems to be some confusion here --

MR. COHEN: I object.

THE COURT: Members of the Jury, there is no confusion, you are the sole judges of the facts.

If you are confused, keep it to yourself.

Just questions, please. Do not tell the Jury they are confused.

MR. KAIN: I said I was.

BY MR. KAIN:

Q When you came on board at 8:00 o'clock, did you tell me that the longshoremen opened up the main deck, upper 'tween deck, lower 'tween deck?

A (Nods head.)

Q They took off the hatch boards on each level and removed the hatch beams?

A Yes.

Q Did they thereafter put back the hatch beams

in the lower 'tween deck?

A Yes.

Q Did they put back the hatch boards?

A No.

Q In the upper 'tween deck they put back the hatch beams?

A Yes.

Q And half the hatch boards--

A Yes, sir.

Q --in the top deck?

A Main deck, they put back all of the hatch beams. All but two.

Q All but two?

A Yes.

THE COURT: That is the beams that go across the width of the ship?

THE WITNESS: Yes.

Q And all of the hatch boards?

THE COURT: Is that right?

THE WITNESS: Yes.

Q Except for the two?

A That's right.

THE COURT: At the ladder.

(Witness nods head.)

Q You thereafter took off the aft hatch beams?

A Boards.

Q Sorry, boards, at the upper 'tween deck level?

A Yes.

Q Did you stack them on the 'tween deck there?

A On the main deck.

Q All the way up?

A Yes.

Q That's the hatch boards?

A From the main deck and the lower 'tween deck. There are two decks involved.

Q Well, I am just talking about the hatch boards that you took off.

A Yes; from which deck?

Q The upper 'tween deck.

A The upper 'tween deck,I stacked them on the deck in the upper 'tween deck.

Q The upper 'tween deck?

A Yes.

Q How long before you left the hatch did you remove these boards on the upper'tween deck?

A How long -- I didn't hear that.

Q Before your gang left that hatch that morning, how long before then did you take off --

A The top cover?

Q No. The hatch boards in the upper 'tween deck?

A Well, after the stevedores left at about 11:00 dclock we took them off about 15 minutes later.

THE COURT: From where?

THE WITNESS: From the upper 'tween deck.

THE COURT: Took off all or half?

THE WITNESS: Took them all off.

THE COURT: Which was the deck at which you left half or had half?

THE WITNESS: There -- I don't know how many beams -- about eight.

THE COURT: Can't you just answer my question. One of those decks finally wound up with half its hatch boards back, which deck was that?

THE WITNESS: That was -- I don't know which deck.

THE COURT: All right.

We will take a five-minute recess now. Mid-morning recess.

(Recess taken.)

THE COURT: Bring the Jury in.

(The following occurred in the presence of the Jury.)

THE COURT: Continue.

RECROSS EXAMINATION

BY MR. KAIN (Cont.):

Q Mr. Scannello, before you cleaned the upper 'tween deck you removed all of the debris that you cleaned out of the lower hold in the lower 'tween deck?

A Yes.

Q When you got to the upper 'tween deck did you also clean the refre box from which the longshoremen had been discharging?

A Yes.

Q And at the time you cleaned this refre box, you had to have boards on the hatch square in order to go in and out of the box to clean it out?

A That's right.

Q And at the time you cleaned the refre box half of the upper 'tween deck hatch square was open and half was closed?

A Yes.

Q At the time you cleaned the refre box was there a net across?

A No. sir.

Q So you had how many sections of hatch boards put in the upper 'tween deck?

A About three sections.

Q That run from the aft end to a point somewhere in the forward part of the hatch square?

A In the middle of the hatch.

Q Somewhere in the forward part of the hatch square, the middle?

A Yes.

Q Now, when you finished the upper 'tween deck you had to open a portion, I think you said one section of hatch boards?

A Yes.

Q To get the debris that you cleaned out of the upper 'tween deck out of the hatch?

A Yes, sir.

Q And this was the aft most section of the hatch boards that you took the very top level, the main deck level?

A Yes.

Q And at that time as you were taking these out of the aft part in order to take them up through the main deck hatch square, you had to have boards over this aft portion of the 'tween deck hatch square, the upper 'tween deck hatch

square; is that correct?

A No, sir, I had the hatch covers off. I took the stuff out of the hold first, the lower 'tween deck and then the top deck.

Q You just told me that before you started any cleaning work in the upper 'tween deck, at least this is what I understood you to say, that you had removed all the debris from the lower hold?

A You can't take the debris out unless you take the hatch covers off, first.

Q When the longshoremen left this hatch, had you finished cleaning the lower hold entirely?

A Yes, sir.

Q Had you removed the debris--

A No, sir.

Q -- from the lower hold?

Was the hatch square to the lower hold at that time covered or was it open?

THE COURT: Or partly covered and partly opened?

THE WITNESS: It was open.

THE COURT: All of it?

THE WITNESS: The lower hold, yes, sir.

Q Now, when the longshoremen left had you also completed the lower 'tween deck?

A Yes, sir.

Q Had the debris been taken from the lower 'tween deck?

A No, sir.

Q Was there any portion of the -- the lower 'tween deck you said was completely open at that time?

A Just the beams were in. The hatch boards were off.

Q Where was your debris, had you stacked it in the wing?

A In the center of the hatch.

Q I don't want to confuse you but you are confusing me.

MR. COHEN: Objection to the form. I ask that it be stricken from the record and the Jury be instructed to disregard it.

THE COURT: Read it back so the Court may know what is to be stricken.

MR. COHEN: He says he is confused.

THE COURT: Read the objectionable question, please.

MR. KAIN: I will rephrase it.

THE COURT: You are to withdraw that.

MR. KAIN: Yes.

THE COURT: Please, do not be confused.

Q I understood you to say, Mr. Scannello, that at the time you completely finished the No. 2 lower hold, your gang had finished cleaning it, that you had collected all of this debris and you had put it, I think you said, in a canvas sling?

A True.

Q You then went to the lower 'tween deck to clean?

A That's right.

Q Now, in cleaning the lower 'tween deck did you cover at the same time while you were cleaning the lower 'tween deck, did you cover the hatch square leading from the lower 'tween deck to the lower hold?

A No.

Q So that hatch square was completely open?

A Except for the beams.

Q Now, when you finished the lower 'tween deck you always put the debris in a canvas sling or bags of some kind?

A Yes.

Q And at that time your hatch square leading to the lower hold was completely open except for the beams being in place?

A Correct.

Q So that when you went to the upper 'tween deck you still had debris to be removed from the lower hold and debris to be removed from the lower 'tween deck?

A Yes.

Q Is that correct?

Now, without these hatch boards in place and the hatch square leading to the lower hold you had to put this debris into the wing, did you not?

A I left it in the square of the hatch, so when the stevedore men finish, I just take the --

THE COURT: What was it resting on?

THE WITNESS: The floor. He is talking about the lower hold.

THE COURT: No, the lower 'tween deck.

THE WITNESS: Yes, put it in the wings.

THE COURT: The wings are off to one side?

THE WITNESS: Yes, sir.

THE COURT: They are not under the square of the hatch.

BY MR. KAIN:

Q Then at this point you had debris in the lower hold and you had debris in the wings of the lower 'tween deck?

A Yes, correct.

Q And you had the hatch square open?

A Correct.

Q At this point you then went to the upper 'tween deck; is that correct?

A Correct.

Q And at the time you went to the upper 'tween deck there was a portion of this hatch square covered that is between the upper 'tween deck and the lower 'tween deck?

A Yes.

Q You had two or three sections?

A Correct.

Q When you finished cleaning this refre box and the upper 'tween deck, did you collect all of the debris there before you removed anything from the hatch?

A I collected it.

Q Did you collect debris from the upper 'tween deck --

A Yes, I put it to the wings.

Q Which wings?

A The aft wings.

Q And you then -- when you finished cleaning the upper 'tween deck, did you take any hatch boards off the main deck hatch square?

A Yes.

Q Now, while you were cleaning the upper 'tween deck were there just one or two or three boards out of the main deck hatch square?

A Yes, sir.

Q And I believe you told Mr. Cohen that in order then to remove this debris from the 'tween deck it was necessary for you to take out a whole section -- that is the hatch boards going all the way across on the top or main deck?

A Yes, sir.

Q When you took these hatch boards out of the top main deck section, did you then remove the debris from the upper 'tween deck first?

A We started on the hold first.

Q Out of the hold first?

A ANd then worked our way up.

Q Before you took it out of the hold did you remove any of th hatch boards then in place in the aft end of the upper 'tween deck?

A They were already out.

Q Had you taken them out by that time?

A No, the stevedores had taken them out.

Q Had the stevedores left the No. 2 upper 'tween deck before you and your men cleaned this refre box --

A They left it closed, the upper 'tween deck they left the hatch boards in.

Q That's what I am talking about. When the longshoremen finished discharging this refre box, did they leave the hatch at that point?

A Yes.

Q And you and your men, thereafter, came in and cleaned this refre box?

A Yes.

Q Now, when the longshoremen left they left an aft section of hatch boards?

A Yes.

Q You left them there while you cleaned this box?

A Yes.

Q My next question: When you finished cleaning the box, when you were ready to remove all of this debris from all of the deck levels of No. 2 hatch, did you take out the hatch boards at the 'tween deck level before you took any of the debris out of the hatch?

A Yes, I took out --

Q Did you take all of the hatch boards out?

THE COURT: I didn't get that last answer. Where did you take the boards out?

THE WITNESS: Upper 'tween deck.

Q So you removed all the boards that were then in place?

A One section.

THE COURT: One section is not all the boards.

THE WITNESS: All of the boards from one side to the other.

THE COURT: From one section?

THE WITNESS: From one section, not the whole hatch.

Q And when you started to work, I think you said there were three sections of hatch boards --

A Yes.

Q --in the aft part?

A Yes.

Q Are you saying that you took out the aftmost section and left the forwardmost section?

A Yes.

MR. KAIN: Thank you.

MR. KOLONSKY: And Mr. Scannello --

THE COURT: Just a moment.

RECROSS EXAMINATION

BY MR. COHEN:

Q Were you down in the upper 'tween deck level when your men were cleaning?

A Yes, sir.

Q Do you inspect after they finish their cleaning work?

A Yes.

Q In connection with the cleaning work that you and your men did in the upper 'tween deck level that day can you tell us whether you came across any longshoremen gloves and hook?

A NO, sir.

MR. COHEN: Thank you.

THE COURT: All right. Step down.

MR.KOLONSKY: I have a question or two.

THE COURT: You have finished your examination. I am not permitting it to be reopened.

No one is going to get the last word in.

MR. KOLONSKY: Exception.

THE COURT: Sir?

MR. KOLONSKY: I except to this.

THE COURT: You haven't requested to -- . You were proceding to question the witness.

He has been sufficiently questioned.

Call the other witness back, please.

THE CLERK: Joseph Rodriquez recalled to the witness stand.

You are still under oath.

J O S E P H R O D R I Q U E Z , called as a witness herein, having been previously duly sworn by the Clerk of the Court, resumed the stand and testified further as follows:

THE COURT: I did not ask Mr. Wolf if he had any questions but I assumed that you did not based on your earlier statement that you had none.

MR. WOLF: None that would have helped, your Honor.

DIRECT EXAMINATION

BY MR. KOLONSKY: (Cont.)

Q When you came to work at 8:00 o'clock on July 3rd, 1967, you testified that you went to the No. 2 hatch?

A That's right.

Q Where was the cargo that was to be discharged located?

A It was upper 'tween deck, a refre box.

Q Is that the only level which you worked?

A That was the only level.

Q And did you remove the cargo with the other longshoremen and place it on pallets?

A Yes, I did.

Q How much of that level was covered with hatch boards?

A Well, when we got down, there was some hatch covers off so we finished covering it so we could make a base so we could work off.

THE COURT: Where was this?

THE WITNESS: On the top of the upper 'tween deck where the refre box was at.

THE COURT: That would be Hatch 2?

THE WITNESS: Hatch 2, correct.

Q What about the forward section of boards of the upper 'tween deck?

A That half of the section was open.

Q And did the cleaners come to work in the aft part -- in the forward part of the No. 2 hold?

A Well, there was some men in the forward part down in the lower hold.

Q Now, there came a time when the discharge of the boxes were concluded; is that correct?

A Correct.

Q When you discharged these boxes with the boom how much of an opening was there in the main deck?

A We had removed two beams off -- two beams off -- that means we took quite a bit so the drafts could come up freely.

THE COURT: Yes, but how much.

THE WITNESS: I would say half of the section of the top of the ship.

Q Half of the boards?

A Half.

THE COURT: Half of the square of the hatch of the main deck?

THE WITNESS: Well, exactly I would say one-third because there was about three sections.

The middle section was closed. The front was open of the forward part and then our aft part we opened that.

BY MR. KOLONSKY:

Q How much was open?

A One-third -- we opened the top-third to get down.

Q Was there another section open, too?

A That was the forward third of the section.

Q So there were two-thirds open?

A Correct.

Q At any time while you were there working did the longshoremen discharge any debris?

A No, we didn't.

Q Now, when you finished with your work at the upper 'tween deck No. 2, tell us in your own words what happened?

A Well, not before we finished, but close to the finishing it was my turn to get out of the refre.

We were alternating. As I came out of the refre box to work on the pallet for my break the winchman called me to come on up so I thought it was lunch so I took off my gloves and hook and I dropped them --

Q When you say the winchman called did he call generally or to you specifically?

A Generally.

Q He said, come on up?

A That's all.

Q There were eight men down there?

A Yes, there was.

Q Which sequence was there for your departure from that area, were you the first one?

A I was the first one.

Q When you got up on the main deck what did you do?

A I just started off the ship.

Q Yes.

A I didn't watch anybody. As soon as I heard, come up, I figured it was 12:00 o'clock lunch period and I departed off the ship.

Q Did you have a watch?

A. Yes.

Q Before you got off did someone call you back?

A Another one of my partners called me back up.

THE COURT: You mean a gang plank leading from the ship to the dock?

THE WITNESS: Yes.

Q Where was this gangway located?

A That was on the left side of the ship.

Q Port side.

Near which hatch?

A Where the mates are. There's housing there.

Q Is that more aft than the No. 2?

A I can't say. I know it's directly in the middle.

THE COURT: Counsel seat yourselves, I am addressing defense counsel, in any

place.

Are you able to see the outline from here?

THE WITNESS: Yes.

BY MR. KOLONSKY:

Q Is this the house you are speaking of or this (indicating)?

A The middle one.

Q That would be near No. 4 hatch, right?

A It would be close to No. 2.

Q No. 2 would be here (indicating).

THE COURT: The forward part of the ship is to your right.

Q If you are going to the gangway you would be working aft, correct?

A Correct.

Q Aft of No. 2 is where No. 4 is located?

MR. KAIN: May we approach the bench?

THE COURT: Yes.

(At the side bar)

MR. KAIN: I am mindful of your Honor's admonition not to interrupt Mr.Kolonsky. Either I don't have rapid enough reflexes as questions are answered --

THE COURT: Why don't you move for a

mistrial.

Counsel, this is not the first case you tried.

MR. KOLONSKY: I tried it this way before. These are simple things.

THE COURT: If you want a mistrial you will get it and you will get it fast.

MR. KOLONSKY: I don't understand why there should be a problem here.

THE COURT: If you were a beginner I would undertake to give you instructions. But you can instruct me although it's coming to my fiftieth year at the Bar.

MR. COHEN: Fifty years?

THE COURT: No, I am 47.

MR. KOLONSKY: I wish you would not speak about these things.

THE COURT: If you keep your hands at your side and you ask this witness distances and dimensions and locations of relevant matters, why you make progress but if you want to testify from out there and not under oath and not with cross-examination available to your adversaries - - Well, I, there may be judges that permit it.

MR. KOLONSKY: The use of my hands and the speech that I have it's known I have Parkinsons disease, it's being partially controlled by pills and I have reactions at times which may be misunderstood.

THE COURT: I have seen Parkinson's disease and I have seen gestures. I regret that you have Parkinson's disease but the gestures do not seem to be related to the disease.

MR. KOLONSKY: That I make when I become more nervous.

THE COURT: So, have someone else try it.

MR. KOLONSKY: I can.

THE COURT: You will get yourself a mistrial.

MR. KOLONSKY: Because I use my hands?

THE COURT: No.

You could be finished in one-fifth of the time. Looking at the time, your doctor is going to have to wait until the medical is in.

(The following occurred in open Court.)

BY MR. KOLONSKY:

Q Now, Mr. Rodriquez, after you were called back

where did you go?

A One of the men told me to go to No. 4.

THE COURT: No. Just answer the question as put.

Where did you go?

THE WITNESS: No. 4 hatch.

Q Who was at the No. 4 when you went there?

A Excuse me?

Q Who was at the No. 4 when you went there?

A Nobody there. We were just starting --

THE COURT: Never mind.

Who was there? And the answer was nobody.

Q Did there come a time when your gang came to No. 4 hatch?

A Yes.

Q What did you do and what did they do?

A We started opening the hatch.

Q How far did you go before lunchtime?

A We just got down to the first deck.

Q What was the nature of the cargo in this hatch?

A There was no cargo there.

Q No. 4?

A Not in the top 'tween deck, there is no cargo.

Q Did you know at that time what the cargo was

to be?

A No, I didn't know.

Q What time was lunch?

A 12:00 o'clock.

Q What time did you return to the ship?

A Little after 1:00.

Q What did you do when you got back to the ship?

A I started to look for the Header -- Sam Austin.

Q Why?

A So I could get permission to get my hooks and my gloves. I left them in the other hatch.

Q Did you know the cargo to be discharged from No. 4 at the time you came back?

A I can't remember because they were opening --

THE COURT: Read the question back to the witness.

And answer only the question, please.

(Question read.)

THE WITNESS: Yes, sir.

Q What was the cargo?

A Hides.

Q H-i-d-e-s?

A Yes.

Q What equipment do you use in the discharging of hides?

A My cargo hook and gloves.

Q And did you talk to anybody after that with respect to retrieving your cargo hook and gloves?

A No.

Q Did you find the header?

A Yes.

Q What did you say to him?

A I asked for permission to go back to the other hatch.

Q Did he give you permission?

A Yes.

Q Did you go back?

A Yes.

Q Tell us how you went back to the other hatch.

A Well, I met the header on the same level as of the other hatch that I was working on and I told him could I go back and he gave me the permission.

THE COURT: Just a second.

Read the question back to the witness.

The Jury will disregard the statement that he just made. (Question read.)

Answer the question as put. Going back means with your feet and not with your mouth.

How did you go back?

THE WITNESS: I went through a passageway.

BY MR. KOLONSKY:

Q Where was that located?

A On the upper 'tween deck on the Hatch No. 4.

Q Would you describe what you saw before you went into the passageway?

A Yes, there was -- before I started up on the ladder I saw a door there so I just figured --

THE COURT: Never mind.

Read the question back to the witness.

The Jury will disregard the comment the witness is making.

Read back the question. (Question read.)

THE WITNESS: A door.

Q A door.

What did you do when you saw the door?

A Pushed it open.

Q Did you have anything with you at that time?

A I had a pocket light.

THE COURT: A flashlight?

THE WITNESS: Pocket light.

Q How large?

A A little key chain.

THE COURT: But it flashes a light?

THE WITNESS: Yes.

Q You say this was at the upper deck level?

A Yes.

Q What did you then do?

A I started into the passageway.

THE COURT: Did you open the door?

THE WITNESS: Yes.

THE COURT: Did it open towards you or away from you?

THE WITNESS: I can't recall.

THE COURT: Then you started into the passageway?

BY MR. KOLONSKY:

Q How far did you walk?

A Well, I can't remember exactly now how far I walked. I just walked directly straight through until I reached the hatch I was in by the reefer box?

THE COURT: You walked straight ahead on one level?

THE WITNESS: Correct.

THE COURT: In this passageway?

THE WITNESS: Correct.

THE COURT: Until you were adjacent, in your estimation, of the reefer box?

THE WITNESS: Correct.

THE COURT: Which you had been working

in Hatch No. 2?

THE WITNESS: That's right.

THE COURT: All right.

BY MR. KOLONSKY:

Q When you got to the reefer box, what was the condition of the hatch covers?

A Well, I expected to find them open.

THE COURT: Strike that out. The Jury will disregard it.

MR. KOLONSKY: I withdraw the question.

Q When you got to the area of the reefer box which you say you recognized, what was the condition of the upper main deck?

A It was closed.

Q When you had left it earlier that day, was it closed?

A We left it open.

Q What did you do at that point?

A Well, I was in the hatch so I started searching for my gloves and hook.

Q Then, what happened?

A I walked out a little further to the coaming of the ship -- they call it "coaming," we call it "coamer," that's just the safetyledge.

THE COURT: Is there a safety ledge at each deck level?

THE WITNESS: Yes.

THE COURT: Is it as high as the one on the main deck?

THE WITNESS: No.

THE COURT: How high is it?

THE WITNESS: About six, -- five inches.

THE COURT: Five or six inches?

THE WITNESS: Yes.

THE COURT: And it runs where?

THE WITNESS: Square.

THE COURT: Runs round the square of the hatch at that level?

THE WITNESS: Yes.

THE COURT: I see.

BY MR. KOLONSKY:

Q How close was that to the ladder?

A I don't remember.

Q You got to that point, looking for your gloves and hook, then what happened?

A I stepped out and I lost my balance and I let out a yell.

Q And you fell down?

A That's when I got out.

Q Were there any permanent lights in this hatch?

A No, there wasn't.

THE COURT: Any lights at all?

THE WITNESS: No, there wasn't.

THE COURT: You spoke about a flashlight?

THE WITNESS: Permanent light --

THE COURT: What do you call it?

THE WITNESS: A pocketlight.

THE COURT: What was the condition of the pocketlight?

THE WITNESS: Well, I got into the passage-way, it wasn't strong but I could see as far as I was walking.

THE COURT: That was the light that came from it. In other words, it was on?

THE WITNESS: Yes, it was.

BY MR. KOLONSKY:

Q At the time you fell, which way were you facing?

A Well, backwards -- like, semi-backwards -- half-way.

Q When you had left that morning, were the hatch covers on that aft end on of off?

A They were on.

Q It was through this space that you say you fell?

A Correct.

Q What do you next recall after you fell?

THE COURT: Let's find out what level he was on.

Do you know what --

THE WITNESS: The upper 'tween deck.

THE COURT: The upper 'tween deck space?

THE WITNESS: Right.

THE COURT: You say what was on the cover of the lower 'tween deck when you left?

THE WITNESS: The top 'tween deck, it was covered up.

THE COURT: Let's see,in the No. 2 hatch you have the main deck.

What is the next deck under it?

THE WITNESS: The upper 'tween --

THE COURT: The next?

THE WITNESS: The lower 'tween deck.

THE COURT: Then, the floor of the lower hold?

THE WITNESS: Yes.

THE COURT: At which level were you working?

THE WITNESS: The upper 'tween deck.

THE COURT: That would be between the upper 'tween deck and the main deck?

THE WITNESS: Correct.

THE COURT: That would be the topmost space. That's where you were walking in this passageway?

THE WITNESS: Correct.

BY MR. KOLONSKY:

Q Were you removed from the vessel?

A Yes, I was.

Q Taken to a hospital?

A Yes.

MR. KOLONSKY: May I have the hospital records, your Honor.

(Documents handed to counsel.)

BY MR. KOLONSKY:

Q When you were taken to this hospital were you conscious or unconscious?

A I was conscious.

Q When you fell and landed below, where did you land?

A Bottom hold.

Q About how many feet would that be?

A I would say --

THE COURT: Look counsel, he's described where he was and we have the dimensions of the ship there. You could supply them because it's a matter of record.

Suppose he approximates and says he fell fifty feet and it shows twenty feet was available or suppose it was the other way around.

MR. KOLONSKY: We do have the figures in the answer to the interrogatories.

THE COURT: Supply it.

His estimate will not take the place of the actual dimensions of the fall if he fell from the floor of the upper 'tween deck to the hold of the ship.

BY MR. KOLONSKY:

Q I will read from the answer to interrogatories by the defendant.

"The vessel shelter deck was approximately ten feet high throughout. That is the same for the upper 'tween deck."

THE COURT: The shelter deck?

MR. KOLONSKY: That would be ten feet.

The No. 2 lower 'tween deck was approximately eleven feet, six inches high. The lower

hold in the hatch No. 2 was approximately fifteen feet high."

THE COURT: It would be approximately 26, 27 feet.

Is that correct? All right.

Members of the Jury, the Court makes no determination as to the credibility of a witness. In other words, you can accept or reject what he has testified to, or accept part and reject the remainder. That's your function. It's not the Court's function.

The dimensions of the ship which are represented by the exhibit produced by the defendant and accepted by the plaintiff shows that if he did in fact fall from the upper 'tween deck floor to the floor of the lower hold he fell approximately 26, 27 feet.

MR. KOLONSKY: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. KOLONSKY:

Q When you fell were you conscious or unconscious?

A I was dazed.

Q Do you know how long you remained on the ship after you fell, before you were taken to the hospital?

A I don't know.

Q Then when you were taken to the hospital, how did you feel? What parts of your body were bothering you?

THE COURT: What hospital was it?

THE WITNESS: Holy Family.

A Well, when I hit the ground I didn't feel anymore pain -- I didn't feel pain until I got to the hospital then I started to feel pains.

Q Where?

A Along my back, the side of my face, my leg and especially in my stomach.

Q They X-rayed you at the hospital?

A Yes.

Q They treated you there?

A They did.

Q Where you in a cast?

A No, I wasn't.

Q Did they perform an operation on you?

A Yes, on my stomach.

Q They opened up your abdominal wall?

A Yes.

Q Did you notice the color of your urine after that?

A I used to bleed.

Q What about how you felt with respect to your head?

A That's always been bothering me. I have this fracture up here and this always gives me headaches most of the time and most of the time gets me dizzy.

Q What about your back?

A My back -- way down towards my pelvis that always bothers me. That's where I got that fracture in several places.

Q WHat about your groin?

A That, if -- if I am bending over -- not all the times but certain times I get tremendous pains.

Q Have you returned to work yet?

A No, I haven't.

Q Now, sir, do you remember what your earnings were at that time?

THE COURT: You mean on the date of the accident?

MR. KOLONSKY: Yes, your Honor.

THE WITNESS: I used to make close to $150.00 a week.

Q How much?

A $150.00, close to that.

Q Besides working for this stevedore, did you work for others, too?

A Yes, I did.

THE COURT: You mean at the same time? During the same year?

THE WITNESS: That was my steady period; when they didn't have work I used to go to other stevedores.

Q Are you still getting medical attention?

A Yes, I am.

THE COURT: Did I understand you correctly -- well, you wouldn't know that.

I didn't get the import of your question. Are you saying that since July 3rd, 1967 you have never worked?

THE WITNESS: No, I haven't.

THE COURT: You haven't?

THE WITNESS: No.

MR. KOLONSKY: Your witness.

I offer into evidence the hospital records, your Honor.

THE COURT: Just hold it a second.

You may examine.

MR. KOLONSKY: May I not offer it now?

THE COURT: The witness is under examination. He is about to be cross-examined. You

cannot interrupt your adversary's examination or supplement your own by going away from the examination of the witness.

CROSS EXAMINATION

BY MR. KAIN:

Q Mr. Rodriquez, this is the type of flashlight you were using (indicating)?

A Not exactly.

THE COURT: Have it marked for identification. The Jury has seen it.

MR. KOLONSKY: May I note that it was marked for identification at the Plaintiff's Examination Before Trial.

THE COURT: No, you may not note that on the record. The Examination Before Trial is not in evidence at this stage.

Just mark it.

Your answer was that it's not exa -ly?

THE WITNESS: Correct.

THE COURT: Mark it as a Court's exhibit. The Jury has already seen it.

What would you call it,a pocket light?

MR. KOLONSKY: I would admit that.

THE COURT: We will call it a pocket light

exhibited by defense counsel.

THE CLERK: Marked Court Exhibit A for identification.

THE COURT: No, in evidence.

They Jury has seen it.

You say it's not like that light. Is it similar to it?

THE WITNESS: Yes.

THE COURT: Yes.

THE CLERK: So marked.

(So marked in evidence.)

XXXX MR. KAIN: Would your Honor bear with me for a moment?

THE COURT: Yes.

(Pause.)

CROSS EXAMINATION

BY MR. KAIN (Cont.):

Q The flashlight, that you were carrying at the time you went back to No. 2 hatch --

THE COURT: I think he described it as a -- he said it was not a flashlight.

What do you call it?

THE WITNESS: A pocket light.

Q Were you carrying this with you at the time you

came to work that morning?

A Yes.

Q Did you have anything affixed to this?

A Yes, had some keys. I had taken them off.

MR. COHEN: I didn't hear the last part.

THE COURT: He said,"I had taken them off."

Are you saying that you carried this pocket light separate from the keys?

THE WITNESS: No, they are all together.

THE COURT: When did you take them off?

THE WITNESS: As I entered. I didn't want to drop the keys.

THE COURT: You did separate them?

THE WITNESS: Yes.

THE COURT: All right.

Q Was the pocket light you were carrying the same type as the light marked for identification?

THE COURT: No, it's in evidence, Court's Exhibit A.

A It was a little bigger than this one.

Q Could you tell me how much bigger?

A Maybe an inch bigger.

Q Did it have a reflector on it?

A What do you mean, lens, glass?

MR. KAIN: Reflector, your Honor, round the light itself.

A No, just had the bulb in the front.

Q Same size bulb as in that flashlight?

A I don't know.

THE COURT: Do you know what a "reflector" is?

THE WITNESS: No.

THE COURT: The witness says he does not knowwhat a reflector is.

Q At the time you testified under oath in my office on May 13, 1969; do you remember that date?

A I do, yes.

Q Did you at that time bring with you a flashlight similar to the one that you were carrying on the day of the accident?

A Similar?

THE COURT: Not the same one.

THE WITNESS: Not the same -- excuse me a minute. Not the same as the one that I had.

THE COURT: In other words, it wasn't the one that you carried as you walked through the passageway?

THE WITNESS: No.

THE COURT: But it was similar to it.

THE WITNESS: Similar in shape but not in size.

Q But it was the same type of flashlight except you say it was a little bigger?

A Yes.

THE COURT: Same type.

THE WITNESS: Practically, yes.

Q Well, the one that you brought with you to the examination before trial was the same as that flashlight there, was it not?

A Yes.

Q And you identified it as the type of flashlight you were carrying except you said the one you were carrying was a little bigger; is that right?

A At the time.

Q I say, at the time you came to my office you identified the flashlight that you were carrying as the same type as the one that you had with you, except you said it was a little bigger?

A It was different to the one that you had shown me.

Q Well, page 32, line 10: Were you asked this question? I am referring to when you testified at my office:

"Q You walked to the door, what did you do then?

"A When I pushed and I thought it was passage at least that leads straight to the hatch where I was working, so I started in and I had like a little pocketlight, flashlight."

Were you asked that question and did you give that answer?

A Yes.

Q "Q How big was that flashlight?

"A Well, it was -- was -- I got one here, but the other one I had was a little bigger than this, about this."

A Correct.

Q Were you asked that question and did you give that answer?

A Yes.

Q So that the one you were carrying was about that size?

A The one that Iwas carrying in your office was exactly like this one.

Q I say the one you were carrying -- you answered the question: How big was this flashlight?

A Yes.

Q You answered the question, "Well, it was -- I got one here but the other one I had was a little bigger than this, about this."

A Correct.

Q The one you were carrying was about that size?

A It was bigger.

MR. KOLONSKY: May we read the next?

THE COURT: You will have your chance.

Members of the Jury, by way of explanation: I told you before that there are pre-trial procedures and among those procedures before the trial are opportunities afforded to opposing counsel to examine the plaintiff or witnesses representing the defendant or others and this deposition which is the same as examination was taken on May 13, 1969 at the office of Mr. Kain, the lawyer who was examining.

You had your own lawyer there, did you not?

THE WITNESS: Yes.

THE COURT: Who was your lawyer?

THE WITNESS: Mr. Kolonsky.

THE COURT: The attorney trying your case.

Did you produce a pocketlight?

THE WITNESS: I had bought another one.

THE COURT: You had one with you?

THE WITNESS: Yes.

THE COURT: Is this the one that you showed? Is this the very one that you showed?

THE WITNESS: No.

THE COURT: What do you say about the size of the pocket light that you were carrying in the passageway?

THE WITNESS: It was different from that one.

THE COURT: What about the size?

THE WITNESS: It could have been -- I can't say, exactly. It would have been maybe a half inch, an inch.

THE COURT: What does that refer to?

THE WITNESS: The length.

THE COURT: It could have been a half inch, or inch longer?

THE WITNESS: Could have been a quarter of an inch thicker.

THE COURT: A quarter of an inch?

THE WITNESS: A quarter of an inch thicker.

MR. KAIN: I believe it was stipulated between counsel --

MR. COHEN: I was going to object to what counsel did. We weren't there.

THE COURT: Did you receive notice of the deposition?

MR. COHEN: May we have a side-bar?

THE COURT: Yes.

Members of the Jury, we will send you out to lunch now.

Heed the admonition I have earlier given you. Come back at 2:15.

(Jury leaves courtroom.)

THE COURT: Mr. Kolonsky, first of all, was the third-party defendant -- was the third-party defendant a party to the action?

MR. KOLONSKY: Yes, your Honor.

MR. KAIN: Yes.

THE COURT: Did you serve notice on the third-party's attorney?

MR. KOLONSKY: I did not take the deposition.

MR. KAIN: May I please direct your attention to what was placed on the first page

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at Mr. Kolonsky's request.

MR. COHEN: Not responsive to your Honor's question.

MR. KAIN: I think it will explain.

"I am informed yesterday, Mr. Walker of my office spoke to Hampton & Dietel attorneys for third-party defendant American Stevedores, Inc. and was informed by them that they did not wish to attend this deposition but did request a copy of the transcript.

"I was then further informed by Mr. Walker that notice of this deposition was given to Ferdinand J. Wolf, attorney for third-party defendant, that Mr. Wolf advised Mr. Walker in a telephone conversation yesterday that he planned to attend on the taking of this deposition."

Would you let the record further show that at approximately 2:45 p.m. neither Messrs. Wolf nor Hampton & Dietel were present.

THE COURT: Did you say notice was given to both defendants?

MR. KAIN: Yes, Mr. Cohen was not in at that time. It was Hampton & Dietel.

THE COURT: My general observation, without Hampton & Dietel there is an improvement as well as a change.

MR. COHEN: Thank you.

THE COURT: That is just one man's opinion.

The deposition was on notice to the other parties to the suit who were already in so we don't have any problem arising. The deposition is admissible as far as it goes. The witness is here --

MR. COHEN: I have no objection to the questions put to the witness and his answer.

I do object to Mr. Kain reading colloquy between counsel and that is why I objected.

MR. KAIN: I was going to ask Mr.Kolonsky to stipulate --

THE COURT: Hold it.

MR. KAIN: May I show your Honor what occurred after the two questions and answers?

THE COURT: Does anyone have an extra copy for the Court?

MR. KAIN: Yes, your Honor.

THE COURT: Let me have it.

(Document handed to the Court.)

THE COURT: At what page does the colloquy appear?

MR. COHEN: Page 32.

THE COURT: I assume that the colloquy merely affected the form of the questions.

"How big was this flashlight?"

"Well, I got one here but the other one I had a little bigger than this, about this."

"Mr. Kolonsky: Indicating four or five inches, would you say?

"Mr. Kain: About like that one that is bigger.

"Now, may we mark that for identification?"

Is that the colloquy?

"The Witness: This isn't the same one that I had dropped when I fell --"

"Mr. Kain: I understand that but you say it was about what size, you said it was a little bigger?

"The Witness: Yes."

Is that the colloquy?

MR. KOLONSKY: There is no contradiction.

THE COURT: Can we agree, Mr. Kolonsky,

that the pencil flashlight that the plaintiff has produced is the same size as the one I am holding in my hand?

Yes, we can and may we mark the one I am holding in my hand for identification; yes we can.

MR. COHEN: The witness' testimony which is what should be controlling is that the flashlight that he was using at the time of the accident was larger than the one produced at the deposition.

THE COURT: I don't know if the case is going to turn on that and I was the only one that brought out that the flashlight was lit.

Remember the old railroad case about the star witness and the swinging of the lamp and so on and then the sequel where the witness is complimented on -- he was the brakeman -- on how he swung the lamp to the right and over to the left and he is complimented on the exactness of his testimony and his comment was, "I was scared he would ask me if it was lit."

Remember that I asked the witness whether

it was lit.

No, Mr. Cohen, your point is not well taken and if you have absented yourself from the examination, you might have a point if what was involved was some stipulation which was alien to the examination.

This is routine, the parties are agreeing.

MR. COHEN: Then I ask the entire colloquy be read.

MR. KAIN: Wait a minute.

MR. COHEN: He said one thing and Mr. Kain gets Mr. Kolonsky to agree to something else, none of the parties are bound by what Mr. Kolonsky wants to agree to except his own client.

MR. KOLONSKY: I agreed the light he brought to the office --

MR. KAIN: I think the Jury will decide

When I asked Mr. Rodriquez my question was: I understand it is about that size, at which point he answered, yes.

It's through Mr. Kolonsky --

MR. KOLONSKY: He said, yes, to what I said.

MR. COHEN: Yes, to what?

MR. KAIN: That's for the Jury to decide.

THE COURT: I suppose it is. Also, I don't understand the intent of Rule 26 when it speaks of how a deposition may be used.

I could understand an objection by counsel in the course of reading a deposition that the deposition is being distorted because the following sentence should be read instead of skipped.

This is cross-examination and the witness is being confronted with answers he earlier gave and if the witness says, "no, I say the flashlight," as he has said about six times already and he probably will stay with it, "was about an inch bigger or half an inch and a quarter of an inch thicker."

You have your problems, Mr. Kain, because you have to offer the deposition at some appropriate stage to show what the answer was and at that point the whole business comes in and then the Court, without any emphasis on

adjectives, verbs or prepositions will read the whole business to the Jury or ask the Reporter to read it.

MR. COHEN: I have no objection.

I was going to ask Kolonsky if it was not true that we stipulated that the flashlight Mr. Rodriquez produced at the EBT was the same size.

MR. KOLONSKY: It had nothing to do with the flashlight used on the ship. It was one produced at the office.

THE COURT: Can we agree, Mr. Kolonsky, that the pencil, flashlight, that the plaintiff has produced is the same size I am holding in my hand?

MR. KOLONSKY: Yes.

MR. COHEN: That's irrelevant. That's the one produced here and not the one used on the ship.

MR. KOLONSKY: He siad it is not the same light and he said the other light is bigger.

THE COURT: You could have a little one that has more power than a big one.

MR. COHEN: A laser beam is not very large.

THE COURT: On that interesting note we will recess until 2:15.

What is your timetable with the doctor?

MR. KOLONSKY: I have to meet him now and as your Honor indicated we will put him on at 2:00 o'clock.

THE COURT: If you put him on at 2:00 you will spoil the fun for me because I won't be back until 2:15.

The witness, having finished his direct, we will interrupt his cross to put the doctor on.

MR. KOLONSKY: Thank you.

(Recess taken for lunch.)

AFTERNOON SESSION

THE COURT: Shall we bring the Jury in?

MR. COHEN: I have an application.

May we recess at 4:30 because I have an appointment to see Judge Travia.

THE COURT: I can't do that but we will recess at the customary hour which is 4:30.

MR. COHEN: I was told by my office my motion for summary judgment before Judge Mishler is tomorrow. I am going to arrange to adjourn that.

THE COURT: All right.

If he will take it Friday afternoon we won't have any session Friday afternoon in all likelihood.

MR. KOLONSKY: Does your Honor say we will not have a session Friday afternoon?

THE COURT: Yes. but the morning we will have a couple of hours. I will tell you on Thursday whether we will use those hours for this case. If it means anything except two hours more testimony then we will have the session.

In other words, we can have the requests to charge passed on or possibly the Judge's charge delivered -- that cannot be. It is unlikely. We will see tomorrow as to what we will do.

Bring the Jury in.

(Jury present.)

THE COURT: Shall we continue with the witness or shall we interrupt --

MR. KOLONSKY: Your Honor stated that he would allow --

THE COURT: Which is your choice?

MR. KOLONSKY: I call David Graubard.

THE COURT: Any objection?

MR. COHEN: None.

MR. KAIN: None.

THE COURT: The plaintiff has completed his direct testimony so there is a sufficient basis and there will be little connecting up and possibly none at all with the doctor's testimony.

(At which point the testimony of Joseph Rodriquez was interrupted and he was excused from the witness stand.

Dr. Graubard was called and testified.)

THE COURT: Members of the Jury, in your absence we took up the question of the continuing of the doctor's testimony. He cannot possibly conclude today and therefore, we will resume with the -- that we will resume the doctor's testimony tomorrow morning at 10:00 o'clock and you people get here sufficiently before 10:00 o'clock so that you can all be punctual.

Heed the admonition that I have given you earlier.

Tomorrow at 10:00.

(Jury leaves courtroom.)

(Court adjourned to 10:00 o'clock, February 18, 1971.)

* * * *

1386-342

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - X

JOSEPH RODRIQUEZ, :

Plaintiff, :

-against- : 68-C-409

OLAF PEDERSEN REDERI, AMERICAN STEVEDORES, A.M. CHRISTOPHER CO., :

Defendants. :

- - - - - - - - - - - - - - - - - X

United States Court House
Brooklyn, New York

February 18, 1971
10:00 A.M.

B e f o r e :

HON. GEORGE ROSLING,

U.S.D.J. and a Jury

I hereby certify that the foregoing is a true and accurate transcript of the proceedings taken in this matter.

Frances Karr

FRANCES KARR
COURT REPORTER

Appearances:

ROBERT KLONSKY, ESQ.
Attorney for Plaintiff

WILLIAM P. KAIN, JR., ESQ.
Attorney for Defendant Rederi

JOSEPH A. COHEN, ESQ.
Attorney for Defendant American Stevedores

FERDINAND J. WOLF, ESQ.
Attorney for Defendant A.M. Christopher Co.

* * *

(The following is an excerpt from the testimony taken on February 18, 1971 during the morning session beginning at 10:00 A.M.)

J O S E P H R O D R I Q U E Z , having been previously duly sworn by the Clerk of the Court, was recalled to the witness stand and testified further as follows:

THE CLERK: You are still under oath, Mr. Rodriquez.

THE COURT: Mr. Kain was cross-examining according to my notes. You are still under oath, of course.

CROSS-EXAMINATION

BY MR. KAIN (CONT'D.)

Q Mr. Rodriquez, you told us, I believe yesterday, that you came on board the ship on the morning of July 3rd, you came on with other longshoremen, is that right?

A That is right.

Q Do you have any present recollection as to what time you came on board?

A A little after 8:00.

Q When you came on board was it raining?

THE COURT: At the very moment of coming on board was it raining?

THE WITNESS: No.

Q Had it rained that morning prior to your coming on board?

A I can recall a drizzle, it was damp.

Q Had there been precipitation, any rainfall of any kind, that morning before you came on board?

THE COURT: He said a drizzle.

A When I came on board it was not drizzling, it was just damp.

THE COURT: The question is any time before you got on board that morning.

THE WITNESS: No.

Q When you got to the pier I think you said it was about 8:00 o'clock that morning, was it drizzling?

A Well, when I entered the pier it was earlier than 8:00 o'clock. I had some coffee outside.

Q When you got to the pier earlier than 8:00 o'clock was it drizzling?

A No.

Q From the time you got to the pier earlier than 8:00 o'clock until the time you went on board the

ship did you have any rain or drizzle during that period?

A I don't remember because I was in - -

THE COURT: Never mind the "because."

A I don't remember.

Q Where did you meet up with the other members of your gang that morning?

A Inside the pier.

Q Inside the pier?

A Yes.

Q Did you all like shape up at that time?

A Yes.

Q What is shape up, will you tell his Honor and ladies and gentlemen of the jury?

A That is where the gang gets together and where we check in.

Q And at that time there were all the gang checking in?

A Yes.

Q Is there a whistle blown or something?

A Yes.

Q At that time?

A Yes, there is.

Q Who blows the whistle?

A The timekeeper.

Q That is the stevedore timekeeper?

A Yes.

Q And if I understand you correctly, that is a signal to the men to get together and go on board the ship and go to work, is that right?

A The check-in.

Q To check in. What do you do in checking in?

A We give our number and then are assigned to a ship.

Q To a particular gang or are you already belonging to the gang?

A I belong to that gang.

Q So your gang is assigned to a particular job, particular ship and the particular hatch at the time you get there in the morning?

A I don't know that.

Q You just go where the men in your gang go?

A That is right.

THE COURT: Where do you check in, on board the ship or before you get on the ship?

THE WITNESS: No, before I get on the ship.

THE COURT: At the timekeeper's?

THE WITNESS: That is right.

Q On this particular morning do you remember

how many gangs of longshoremen went on board the Sunny Prince?

A No, I don't remember.

Q Was there more than one?

A Well, in the pier there are several gangs there. We don't know where the gangs are going.

THE COURT: They might go to other ships?

THE WITNESS: Correct.

Q Did you uncover - - your gang uncover that morning when you went on board - - did your gang uncover the hatch that morning when you went on board the ship?

A Number 2 Hatch.

THE COURT: The gang did uncover Number 2 Hatch that morning?

THE WITNESS: That is right.

Q How long did that take, do you remember?

A I don't remember.

Q At the time you were uncovering Number 2 Hatch were there any longshoremen uncovering any of the other hatches that you could see?

A The ship was too big. I wasn't looking back, I was doing my own job.

THE COURT: In other words, you did not see?

THE WITNESS: I just went to work, that is all.

Q While you were uncovering Number 2 Hatch - - how far is that from Number 1 Hatch?

A Well, 1 and 2 are together so we can work right in there, 1 and 2.

Q Are there two hatch openings on this ship, 1 and 2?

A One hatch opening for the whole two hatches.

Q Is it your testimony that there is just one opening to the main deck from Number 1 and Number 2 hold?

A That is right.

Q At the time your gang came on board that morning do you remember coming up the gangway to go on board the ship?

A That is right, yes, sir.

Q Did any longshoreman other than the longshoreman in your gang come on board at the same time?

A We were the first gang up.

Q Did you at any time later that day prior to your accident observe any longshoremen other than members of your gang working aboard the ship?

THE COURT: Anywhere.

THE WITNESS: I do not know.

Q When you went to lunch I think you said it was about noon time, do you recall any longshoremen other than members of your gang leaving the ship to go to lunch?

A I just remember my gang.

Q And how about when you came back at 1:00 o'clock, did you observe any longshoremen other than members of your gang?

THE COURT: Coming back.

THE WITNESS: Coming back to the ship?

Q Back to the ship afterwards.

A I just got aboard with my gang. I don't know if there was any others.

Q So it is a fair statement to say you do not know whether there were any other longshoremen other than members of your gang working aboard on that ship any time that day; is that a fair statement?

A Yes.

Q When you came aboard the ship you went directly to Number 2 Hatch?

A Yes, sir.

Q At the time you got to Number 2 Hatch do you recall whether or not the boom of the hatch had been rigged?

A No, I don't remember.

THE COURT: Rigging the boom is what?

THE WITNESS: The boom is so we can work on the cargo has to be rigged.

THE COURT: What is the meaning of the word "rigged"?

THE WITNESS: Rigged means it has to be set.

THE COURT: In a certain position?

THE WITNESS: In a certain position.

THE COURT: So that the fall line can drop into the hatch that you were working in and hoist material up and lower it?

THE WITNESS: That is right.

Q Isn't the rigging of the setting of these booms in a definite position always done by the longshoremen?

A Yes, most of the time.

THE COURT: He says "most of the time."

Q In the Port of New York or have you ever worked anywhere but New York as a longshoreman?

A In New Jersey too.

Q In the Port of New York isn't the boom always spotted or placed or set by the longshoremen?

A Most of the time.

Q Are there occasions when you are going to work the hatch when it is not done - -

MR. KLONSKY: I object to the relevance of that.

THE COURT: Overruled.

A Excuse me, sir?

Q Have you been present on occasions where you as a longshoreman, your gang were going to work a hatch where the booms were not spotted or put in place or set by the longshoremen in your gang?

A Yes.

Q Do you remember what pier that was at?

A I don't remember the pier, I think once in my own pier.

THE COURT: That is Pier Number 3?

THE WITNESS: Yes.

THE COURT: Where this ship was?

THE WITNESS: Yes.

THE COURT: But not on this occasion?

THE WITNESS: Not on this occasion - - I don't remember.

Q Can you routinely work at Pier Number 3 as a longshoreman?

A Yes.

Q By the way, when did you first start to work as a longshoreman?

A In 1965.

Q Would you tell me when in 1965, approximately? I know you do not know the exact date but approximately when did you first start to work?

A The beginning of 1965, the very beginning.

THE COURT: That was during the winter months?

Q Sometime in January?

A Yes.

THE COURT: He says during the winter months.

Q Do you remember whether it was in January?

A I don't remember.

Q You just remember it was in the winter months of 1965? Was that the first time you had done any longshoreman work at all?

A That I remember, it was the first time.

Q And since you started to work in the winter months of 1965 as a longshoreman had you done any other type of work up to and including today?

A No.

Q Could you tell me how long - - withdrawn.

When you got to Number 2 Hatch that morning, that was the first place on the ship that your gang had gone to?

A That is right.

Q When you got there you say you opened up Number 2 Hatch, the longshore gang did?

A Part of the hatch we opened up.

Q Let us take the main deck level. Did you open up all of the square of the hatch or just a portion of the square of the hatch?

A A portion.

THE COURT: A portion?

THE WITNESS: Yes.

Q And could you tell me what portion of the Number 2 Hatch on the main deck level you opened up?

A The after.

THE COURT: That is the rear part?

THE WITNESS: That is right.

Q How many sections of hatch boards did you take out at that time?

THE COURT: That is the main deck.

A Two sections.

Q Two sections?

A Two sections.

Q Were these hatch boards taken out the entire width of the hatch?

THE COURT: From one side of the ship to the other.

THE WITNESS: Yes.

Q And were they the two after sections, the two back sections on the main deck level?

A Yes.

Q You took these hatch boards off and where did the longshoremen in your gang place them?

A On the deck of the ship.

Q That is the top deck?

A That is the main deck.

Q The main deck?

THE COURT: Also known as the weather deck, is that right?

THE WITNESS: Yes.

Q Did the longshoremen in your gang take any boom - - I am sorry, beams out of the hatch square at that time?

A They took two beams out.

Q Two beams? Was it necessary to use the cargo gear, the booms and the winches to take these beams

out?

A Yes.

Q And were they also placed on the top deck?

A I don't remember.

THE COURT: The winches are stationary, is that correct?

THE WITNESS: That is right.

Q Can you tell me approximately how long it took your gang to uncover the after portion of this hatch?

A I don't remember.

Q In the period of time that you worked as a longshoreman between the winter of January 1965 and the time of your accident in 1967, did you and your gang uncover a great many hatches, did you not, for all kinds of ships?

A That is right.

Q Could you give me an average amount of time that it took your gang, this gang you worked with at Pier 3, of which you were a regular member, to open a hatch square on one level and take out the beams and take off the hatch hood?

THE COURT: The entire hatch cover.

A I can't say.

Q Just taking one level.

A I wouldn't know, the ships are many different sizes.

Q Well, let us reduce it down to one section of hatch boards going across a hatch approximately twenty feet wide. How many of the longshoremen in your gang would actually engage in taking off the hatch boards?

A Sometimes we alternate four for safety - - we can't have too many men running on top of the hatch. Sometimes we alternate, sometimes four opens up and sometimes eight if the hatches are big.

Q Well in your gang did the deck man, that is the winch operator, the relief man, the gangway man, was it normal practice in your gang for these longshoremen to assist in taking off the hatch boards?

A No.

Q Was this work not done entirely by the eight men in your gang in the normal operations?

A Yes.

Q On this particular day, July 3, 1967 did the eight men, the eight hole men in your gang, all assist in uncovering the Number 2 Hatch on the main deck level when you first got there that morning?

A I don't remember.

Q It was normal practice for them to do so in

uncovering a hatch, was it not?

A That is right.

Q And it was also normal practice for the deck men in your gang to spot the booms as necessary, was it not?

A Yes, sir.

Q When you had finished uncovering this hatch at the main deck level - -

THE COURT: He did not say he uncovered the hatch. He said he uncovered the after part of the hatch.

Q When your gang had finished uncovering the after part of this hatch at the main deck level, the forward part of the hatch square was still covered by hatch boards, is that right?

A No, it was not.

Q That was open too?

A Yes, it was.

Q Was it open when you came on board?

A Yes, it was.

Q And could you tell me how many sections of hatch boards had been removed from the forward end of this hatch square at the time you came on board?

A I didn't go to the forward part, I wouldn't know.

Q When you got to Number 2 Hatch, Mr. Rodriquez, that morning for the first time you were standing next to a square opening about thirty-five feet by twenty-five feet, were you not?

A Yes.

Q And a portion of this - -

THE COURT: Counsel, that could not possibly be a square opening.

MR. KAIN: I am referring to it in its concept as a hatch square.

THE COURT: The square of a hatch is one thing.

Q When you got there this morning for the first time and came up on the deck you were next to a rectangular opening , were you?

A Yes.

Q You know what I mean by a hatch square, don't you?

A Yes.

Q And the hatch square on the main deck level, a portion of it was open, is that right?

A That is right.

Q Approximately what portion of it was open, can you tell me? Was it a quarter open, that is the

entire length, or was it a half of it?

A I wouldn't know.

THE COURT: Give us your best judgment.

THE WITNESS: I couldn't because I was offshore. All I did was look offshore and take off the hatch covers. I did not go to the forward part and look at anything.

Q Is it possible for you to take off hatch covers without ever looking at the area from which you are removing the hatch cover?

A All I have to look at is an area they tell me to work on, nothing else.

THE COURT: The ladder was in the back area, the ladder which you descended?

THE WITNESS: Yes, it was.

Q At the time you uncovered this hatch it was daylight, was it not?

A Excuse me?

THE COURT: It was daylight?

THE WITNESS: Yes, it was.

Q When you went on board and went to Number 2 Hatch and your gang started to take the hatch boards off did you assist in taking any hatch boards off?

A Yes, sir.

Q Can you tell me how you did it? How did you take off the hatch boards that you assisted in taking off?

THE COURT: You personally.

A I got up on top of the hatches, I stand on one of the foundation and remove another and I passed it over to the next man.

Q Did you start at the - -

A Middle.

Q The outboard edge?

A No.

Q Did you walk in on top of hatch boards that were already in place?

A Yes, sir.

Q And you removed the hatch board from the middle section?

A Yes, sir.

Q Did you start in the after row?

A I started on the second hatch cover.

Q The second hacch cover from the center line of this hatch square or at the edge of the hatch square?

A From the center line.

Q From the very middle part, is that right?

A That is right.

Q As you got on to the hatch boards which covered this hatch square it was necessary for you to climb up to get on, was it not?

A That is right.

Q And as you were working on this hatch - - incidentally, was this hatch approximately thirty-five by twenty feet, thirty-five feet long by twenty feet wide?

A I would say roughly that approximately is it.

Q Approximately that.

THE COURT: You are referring to Hatch Number 2?

THE WITNESS: Yes, sir.

THE COURT: Hatch Number 2 and 1 were together?

THE WITNESS: Well, that is correct. I figure maybe it is about thirty feet long or maybe forty, I don't know.

Q As you uncovered back and forth, is it your testimony that you did not look towards the forward end of this hatch square at all, is that right?

A No.

THE COURT: You are saying it is not correct or you did not look?

THE WITNESS: I didn't look.

Q Do you have any recollection at this time as to how many of these hatch boards you assisted in taking off that day, you yourself? I am talking about the morning of July 3rd, 1967.

A From the hatch maybe about twenty-four.

Q About twenty-four?

A Could be.

Q Do you have any recollection as to how many hatch boards were in place across each entire section, how many hatch boards made up a section, in other words of the width of the hatch, if you know?

A Maybe fifteen - - I can't remember at this time.

Q When you got to this hatch,and when I say you I mean your gang, had the tarpaulin or canvas cover been removed from the top of the hatch boards?

A I think we moved it.

Q And was this canvas cover or tarpaulin just covering the after part of this hatch square at the time you got there?

A Yes.

Q It had been rolled back on to the after part, if you know?

A I am not sure.

Q If you know, had the hatch beams been taken

out of the forward part of the hatch square at Number 2 Hatch?

A I think so.

Q You think so?

A I think so.

Q After your gang uncovered this arter part of the hatch square on the top deck, the main deck, 2 Hatch, what did you do next?

A Went down to the next deck.

Q And when you got down to the next deck what did you do?

A We put a few hatch covers on that was off.

Q Would you tell me approximately how many hatch covers you put on?

A About three.

THE COURT: Just one moment; you say you put about three hatch boards back?

THE WITNESS: Yes, sir.

THE COURT: At which level, the main deck or the deck to which you had just descended?

THE WITNESS: The deck I just descended.

THE COURT: That would be the top between deck?

THE WITNESS: That is right.

Q And in this upper between deck after you put back you say some hatch covers that were off, was the hatch square in the uppper between deck, the hatch square leading from the upper between deck to the lower between deck, was it then entirely covered or partially covered?

A Partially covered.

Q What portion of it was covered?

A Half of the hatch.

Q Approximately half of this hatch square?

A A little more than half.

MR. KLONSKY: Is that between decks?

THE WITNESS: Between decks, yes.

MR. KLONSKY: I did not hear the witness.

THE COURT: A little more than half.

Q That was the after portion, was it, that was covered then?

A Yes.

Q Were there any hatch beams in place in the hatch square on the upper between deck, the hatch square leading from the upper between deck to the lower between deck in the forward part that was covered when you got down there that morning?

A I don't know.

THE COURT: Is Hatch 1 and Hatch 2 a completely connected space or is there a partition between them?

THE WITNESS: Completely connected.

THE COURT: In other words there is no partition that separates Hatch Number 1 from Hatch Number 2?

THE WITNESS: No, there is not.

Q When you got down into the Number 2 upper between deck and you put these two or three boards, I think you said, back that were missing and the after part of the square of the hatch in the upper between deck, were there any other persons other than the longshoremen, the men in your gang, present in your hatch, if you know?

A There were some men working in the lower hold.

Q Working in the lower hold?

A Yes.

Q Were there any men, if you know, working in the lower between deck?

A No, I wouldn't know.

Q Do you know how many men were working in the lower hold at that time?

A No, I don't.

Q After you put these two or three hatch boards back in the square of the hatch of the upper between deck what did the hole men in your gang then do?

A They went to a reefer box.

Q Did you rig a safety net or a net of any kind across from side to side at the end of the covered portion of that hatch square?

A I didn't rig it but it was being rigged.

Q Was it rigged by the members of your gang, the hole men in your gang?

A Yes.

THE COURT: Rigged means being put up?

THE WITNESS: Yes, sir.

Q Was it put up before the hole men in your gang started to work?

A Yes, sir.

Q On this reefer box? Now, this reefer box was closed when you got down there, was it?

A Yes, sir.

Q While you were in the hatch did you work in more than one reefer box?

A No.

Q Could you tell me whether this reefer box

that you worked in Number 2 Hatch upper between deck was on the inshore side of the ship or offshore?

A Offshore.

Q How did you get into the box, was there a door?

A Yes, there was a door there.

Q Did the longshoremen open this door?

A The mate opened the door.

Q The who?

A The mate.

Q Do you know which mate it was?

A No, I don't know.

THE COURT: Did you see him?

THE WITNESS: I saw a seaman come down and open the reefer box.

THE COURT: You said the mate opened it and now you say a seaman. Do you know the difference between a seaman and a mate?

THE WITNESS: Well, there is.

THE COURT: Just answer my question.

THE WITNESS: All I know are seamen, that is what I know. I figure a mate.

THE COURT: How is he dressed?

THE WITNESS: I don't remember.

THE COURT: Did he have any kind of uniform on?

THE WITNESS: I don't remember.

THE COURT: Was he a member of your gang?

THE WITNESS: No, he was not.

Q Are you saying you assumed it was opened by a seaman?

A Yes.

Q Was there something which identified this man as a seaman or are you saying he was a seaman because he was not a member of your gang?

A That is right, because he was not a member of our gang.

THE COURT: Did he have a hat or cap on him?

THE WITNESS: I don't remember.

Q Can you tell me how big was the door which gave access or permitted you to get into this reefer box?

A About seven feet high and about ten feet in length.

Q Was there some type of device or devices for fittings that held it closed that had to be used or manipulated in order to operate it?

A I guess so.

Q Do you have any recollection of what the door

and the fittings look like at this time?

A No.

Q After the door was opened what did the longshoremen do then?

A They waited a few minutes for the reefer box to refresh itself - - it was just cold.

THE COURT: What does "refresh" itself mean?

THE WITNESS: It is cold when you open it up, it is just frost coming out and we have to let the frost get out before we get into it and start working.

THE COURT: In other words, it gets closer to room temperature?

THE WITNESS: Correct.

Q How long do you recall did you wait for the reefer box to refresh itself?

A A few minutes.

Q After it was opened?

A Maybe ten minutes.

Q And then what did the hold men do?

A They started rigging to palletize on the bottom so we could work off the reefer.

THE COURT: What does that mean?

THE WITNESS: That means we were preparing our work space, our work bench so we could work off this reefer to the pallet so we could send the cargo up.

THE COURT: Where were the pallets?

THE WITNESS: Right alongside the reefer.

THE COURT: When you say palletize, you mean this procedure by which you load the cartons on to the pallets?

THE WITNESS: That is right, sir.

THE COURT: And move the pallets anywhere or do you move the slings down to the pallets?

THE WITNESS: We move the wire, the hook, we move the hook towards the pallet.

THE COURT: How big are these pallets?

THE WITNESS: They are about six feet across and maybe five feet in width.

THE COURT: About six by five foot pallets?

THE WITNESS: Yes.

THE COURT: On which the cartons go?

THE WITNESS: Yes.

THE COURT: And then the cargo hooks which are attached to the cables are hooked on to the corner of the pallet?

THE WITNESS: That is right.

THE COURT: And the pallets go up because the winchman on the deck starts that winch, the wheel, the cylinder, rather, turning and rolling up?

THE WITNESS: That is right.

THE COURT: And that is what you mean by palletize?

THE WITNESS: That is correct.

THE COURT: I think we will take our lunch recess. Will counsel remain for a few moments, please?

Members of the jury, you will return at 2:15 and heed the admonition earlier given to you. You may step down.

(The jury retires from the courtroom.)

We said we would discuss the Friday procedure and as to that I have to find out first of all from the plaintiff will this be your last witness or are there other witnesses?

MR. KLONSKY: I have one short witness, your Honor.

THE COURT: This witness alone should

take of the better part of the afternoon if not the entire afternoon. You have not reached the medical aspect and you are not too deeply into the liability aspect of the witness' testimony.

Assuming we conclude with this witness today, that means we will proceed to the defense. Will there be any witnesses for the defense?

MR. KAIN: There will be witnesses for the defense.

THE COURT: What type of testimony generally are you going to have, medical testimony?

MR. KAIN: I had not planned starting with it, your Honor, but there will be medical testimony.

THE COURT: And in addition there will be liability testimony?

MR. KAIN: There will be one of the ship's officers and ship's mate, chief mate.

And I anticipate probably certain expert testimony, your Honor, but there may be testimony depending on what

develops from persons having custody of documents. In other words, Mr. Klonsky says he is going to use statistical witnesses and I cannot tell, your Honor, prior to hearing what the statistical witness testifies to whether perhaps we will have some testimony along that line.

MR. KLONSKY: It has to do with guaranteed annual wage.

THE COURT: Mr. Cohen, what does your testimony look like at this stage of the case?

MR. COHEN: Maybe some medical testimony and possibly one other witness.

THE COURT: What other type of witness?

MR. COHEN: Maybe an expert.

THE COURT: Mr. Wolf?

MR. WOLF: I do not propose to put any witnesses on at this stage.

THE COURT: That seems to indicate that while we might get a couple of hours testimony in tomorrow morning that will not finish the case.

MR. KAIN: I am certain we will not be

finished by the end of tomorrow morning.

THE COURT: There will be no convenient stopping place. There would just be another witness testifying tomorrow.

Mr. Klonsky, how do you feel about it?

MR. KLONSKY: That we should not come in tomorrow, I would suggest we take off tomorrow.

THE COURT: And I suppose defense counsel is agreeable or are you under the gun?

MR. COHEN: I am under the gun for tomorrow afternoon with Judge Mishler.

THE COURT: If it is agreeable to all counsel there will be no session in this case tomorrow and I will so advise the jury when they come back after lunch and we will resume on Monday at 10:00 o'clock.

MR. KAIN: Perhaps I am anticipating but in the event I commence my case on Monday and I have a witness on the stand would your Honor permit me to withdraw him for a medical witness?

THE COURT: So far as the defendants are concerned, unless the plaintiff puts forward

some objection of substance I permit the defendants to proceed in whatever order they prefer. Insofar as the plaintiff is concerned I have found that it is advantageous to have at least his version of the medical come in before his doctor testifies but that is in order to be able to provide a proper basis for hypotheticals. I do not like to take testimony subject to connection.

We will recess until 2:15 o'clock P.M.

(Whereupon, at 1:00 o'clock P.M. a recess was taken until 2:15 o'clock P.M. of the same day.)

* * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

RODRIGUEZ, :

Plaintiff, :

-against- : 68-C-409

OLAF PEDERSEN KEELEY, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

February 18, 1972
2:00 o'clock p.m.

B e f o r e :

HONORABLE GEORGE ROSLING, U.S.D.J.

HENRY SHAPIRO
OFFICIAL COURT REPORTER

30B.

Appearances:

ROBERT KLONSKY, ESQ.
Attorney for Plaintiff

WILLIAM P. KAIN, JR., ESQ.
Attorney for Olaf Pedersen Rederi

JOSEPH A. COHEN, ESQ.
Attorney for American Stevedores

FERDINAND J. WOLF, ESQ.
Attorney for Christopher Co.

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AFTERNOON SESSION

THE COURT: Bring the jury in.

(The jury present.)

MR. KAIN: May I continue, Your Honor?

THE COURT: Yes, please.

MR. KAIN: Your Honor, may I have the reporter read back the last two questions?

THE COURT: I think it was Mrs Carr that was here and the last entry I made was, "waited for the reefer boxes ten minutes to refresh themselves."

MR. KLONSKY: The seamen opened the door and the door was about seven feet high.

THE COURT: That is before that.

CROSS-EXAMINATION (Cont'd.)

BY MR. KAIN

Q Mr. Rodriguez, do you recall when all the men in your gang first started to discharge this frozen shrimp in upper tween No. 2 deck?

A In the morning.

Q What time?

A Close to nine, little after nine.

Q Now, during this discharge of the shrimp did the stevedore bring two other longshoremen from the dock to

assist the eight hold men in the discharge?

A I don't remember.

Q When you started the discharge of the frozen shrimp in this refre box, do you recall whether the box was completely full?

A The refre box?

Q Yes.

A Yes.

Q So if I understand you correctly, when you opened the door it was just full of frozen shrimp?

A Yes.

Q And you had to discharge what was at the door before longshoremen could get into the box?

A We could get into the box and then hand the skrimp out.

Q Did you , when you commenced work, start to work in the box?

A Yes.

Q Was there a custom and practice in your gang, in the discharge of frozen cargo, as to how you would rotate the men who were working in the box as opposed to the people working outside the box?

A No.

Q Did the same men who started working in the

2a Rodriguez - cross

box, would they stay there throughout the discharge or did they change over with the men working outside?

A They did.

Q They did change?

A Yes.

Q On the morning of July 3rd, did you work both in the box during this discharge and outside the box?

A I worked most of the time inside the box.

Q Did you work some of the time outside of the box?

A Say a few minutes outside.

Q And the rest of the time you worked in the box?

A Yes, I did.

Q Now, during the time that you worked in the upper tween deck assisting in this discharge, did you at any individuals or persons in that upper tween deck other than the members of your gang?

A No.

Q Did you observe any individuals anywhere other than the longshoremen in your gang?

A I was in the refre box and I couldn't see out.

Q Is the answer then that you did not see any other individuals during the time you were working in that hatch?

3a Rodriguez - cross

A No.

Q Did there come a time when the longshoremen in your gang -- the hole men finished the discharge of this frozen shrimp?

A Yes.

Q Were you down in the hatch -- do you know in the upper tween deck when this discharge was finished?

A Yes.

Q Any time while you were down in No. 2 hatch, did you observe any other cargo -- anywhere in the hatch at this deck level -- other than the frozen shrimp in the back?

A There was no other cargo.

Q Did you see any other cargo other than the frozen shrimp anywhere in that hatch in any deck level?

A No.

Q As I understand you all you saw was the frozen shrimp you were discharging?

A On that level of the ship.

Q Anywhere in that hatch, while you were down in No. 2, did you observe any cargo anyplace?

A No.

Q Can you tell me approximately when the longshoremen finished the discharge?

A About eleven o'clock.

Q About eleven o'clock.

And when you finished the discharge, what did you do then?

THE COURT: What did he personally do?

MR. KAIN: He personally.

A At eleven o'clock I got an order to come up out of that hatch and I started off the ship thinking it was my lunch.

Q Do you recall who gave you the order to come up?

A The deck man.

Q Do you remember which one?

A No.

Q Were you present in the court the other day when Mr. Austen testified?

A Yes.

THE COURT: Do not confront the witness with any other witness' testimony. Ask him the direct question. He is not the judge of the credibility or recollection or of anything else of anyone else's testimony.

Q Was the practice on this pier to blow a whistle when the men were to start ashore for lunch?

5a Rodriguez - cross

A Yes.

Q During the time -- how long had you worked on this pier before the day of this accident?

THE COURT: Pier, not shop?

MR. KAIN: On the pier.

A How long I worked on the pier?

Q How long did you work on this pier?

A About a year.

Q This was your regular pier?

A Yes.

Q During this one year time, it was the practice to blow a whistle for the men to come ashore at noontime?

A Yes.

Q That was the practice to blow a whistle just before you went ashore at night, say at five o'clock?

A No.

Q It was not the practice?

A Well, at five o'clock they'd knock us off and that's all.

Q In the process of knocking you off, did they blow a whistle after five o'clock?

A I never heard a whistle. I'm in the ship. That's all I know. I get my orders from the winch man. When he tells me to knock off, I knock off.

Q The hatch boss is in charge of the gang, correct?

A Correct.

Q In any event, this was the practice to blow a whistle when you went ashore at noontime?

A Yes.

Q When you finished this discharge, with all the longshoremen in that tween deck -- your fellow longshoremen, were they told to come up too?

A We all started up.

Q Did you all start up at the same time?

A I started up before anyone.

Q And this was in response to a call from someone up on deck, one of the deck hands?

A Correct.

Q And you started up the ladder, were there any longshoremen coming behind you?

A Yes, there was.

Q And as you started up the ladder, did you tell us the other day that you took off your gloves and hooks and left them there in the upper tween deck?

A Correct.

Q Where did you -- where were you when you took them off? Were you in the refre box or outside?

A Just coming out of the refre box.

Q And what did you do with them?

A I dropped them next to the ladder when I was stepping up to get off the ship.

Q Was it immediately next to the ladder?

THE COURT: Right close to it?

A Close to it.

THE COURT: He is asking whether it was close?

THE WITNESS: Close to the ladder.

Q How close, right next to it, or some distance away?

A I just took them off and dropped them and started up the ladder. I can't say close or far.

Q What side of the ship did you go up the ladder, off shore or in shore?

A I don't remember.

Q Did you go up the ladder forward, or did you go up the ladder aft?

A Aft.

Q Were you the first man out of that hatch?

A Yes, I was.

Q But there were other longshoremen coming immediately behind you; is that correct?

A Yes.

Q As you left the hatch, did you observe any of your fellow longshoremen leaving any gear?

A I was the first -- I was the first one out. I don't know what they did.

Q Did you observe any of your fellow longshoremen leaving any gear --

THE COURT: The question is observe. Did your eyes see any?

THE WITNESS: No.

Q Now, when you got up on the top deck, when you got out on the upper tween deck out to the main deck, what did you do then?

A Started off the ship.

Q Did you receive any instructions from anyone as you came up on the top deck, the main deck?

A No, I didn't.

Q You just started off the ship?

A Yes.

Q You weren't instructed by anyone to leave the ship?

A No.

Q You got no instruction to go anyplace or do anything; is that correct?

A Just to come up.

Q When you started to go off the ship, did any of your fellow longshoremen start off the ship with you?

A Yes.

Q Do you remember how many of those longshoremen?

A Two more behind me.

Q Do you remember who they were?

A No, I don't, -- I remember one. I think his name was Matt. I'm not sure. But his nickname was Matt.

Q Do you remember his name?

A No, I don't.

Q Other than Matt?

A No, I don't.

Q Now, did there come a time when you were told to come back and not go off the ship?

A Yes.

Q And when you were told to come back, how far away from No. 2 hatch did you get?

A I was down the gangplank already -- halfway down, and that's when they told me to come back to No. 4.

Q You were halfway down the ship's accommodation ladder leading to the pier when you were told to come back?

A Yes.

Q While you were on the accommodation ladder,

were any of your fellow longshoremen with you on the accommodation ladder?

A Yes.

THE COURT: Is it a ladder or gangplank?

THE WITNESS: Gangplank.

THE COURT: Is that the same as an accommodation ladder?

THE WITNESS: I don't know what an accommodation ladder is.

THE COURT: You just said "yes".

THE WITNESS: It was accommodating to me.

THE COURT: In other words, it was a gangplank?

THE WITNESS: Correct.

Q Did it have steps?

A Yes, it did.

Q Who told you to come back, if you recall?

A Someone in my gang told me to return to the ship.

Q Was it one of the men on the ladder with you at the time?

A I don't know.

Q Did you go back?

A Yes, we did.

Q Did you go back to No. 2 hatch?

A No, they told us to go to 4.

THE COURT: Just a moment. You were asked only one question. The jury will disregard the remainder. Did you go back to No. 2 hatch?

THE WITNESS: No, I didn't.

Q Where did you go?

A When I returned to the ship?

Q When you returned to the ship.

A No. 4 hatch.

Q Did the longshoremen who were leaving the ship with you go back to No. 4 with you too?

A Yes.

Q How many longshoremen, all told including you, went back to No. 4?

A I guess all of us, we just went over to No. 4.

Q How many is "all of us"?

A Eight.

Q Were they all hole men?

A All hole men.

Q If you know, when your gang finished the discharge with the shrimp in the No. 2 upper tween deck, did they cover the deck or the hatch square -- the No. 2 hatch square, that's the top level?

THE COURT: Just a moment. Read that question back, please.

(Question read.)

A We didn't cover it.

Q Do you know they didn't cover it or is your answer that you did not see them cover it?

A Well, I'm the hole man and I didn't cover it and the men that I worked with didn't cover it.

Q If it had been covered, would it have been necessary to put the hatch beams back in the square of the hatch?

MR. KLONSKY: I object to this.

THE COURT: I will allow it. It is a rather awkward question.

Would you have had to put back the beams or were they already there?

THE WITNESS: They'd have to be put back.

THE COURT: Was that your question?

MR. KAIN: That's my question, yes.

Q Could you approximate for me, Mr. Rodriguez, how much time elapsed from the time you left No. 2 hatch until you arrived at No. 4 hatch?

THE COURT: Including walking off the ship and coming back?

MR. KAIN: Yes.

A I'd say about fifteen minutes.

Q Did you do anything after you left No. 2 hatch, walked down the ship to the gangway, walked down the gangway about half way, came back and went to No. 4 hatch? Is that all you did in that time interval?

A No, as the men were starting up I asked them where they were going and they told me No. 4 and then we started up and the rest of the gang was coming and so then we all went together to No. 4 hatch.

Q That's not my question, Mr. Rodriguez. I am asking you, after you left No. --

THE COURT: It was an answer to your question. Next question, please.

If you wish, I will have the reporter read it back.

MR. KAIN: Yes, I would like it read back.

THE COURT: Read back the question and answer.

(Testimony read.)

MR. KAIN: May I continue, Your Honor?

THE COURT: Yes.

Q Is it your testimony that it took you, approximately, fifteen minutes to walk from No. 2 hatch to the gangway, half way down the gangway, back up the gangway and from the gangway to No. 4 hatch? Do you

understand the question?

A Yes, could have been fifteen minutes or less.

Q But the best estimate you could give me of that time is, apprxoimately, fifteen minutes; is that right?

A Or less.

Q Did all eight of the hole men in your gang arrive at No. 4 hatch at about the same time?

A The ones that I can say that arrived was the ones that were with me. I worked on the offshore side and those four were with me when we got to No. 4.

Q At, approximately, 11:15 that morning were you and your fellow hole men at No. 4 hatch?

A I don't know if all the hole men were there, but I know my side was there.

THE COURT: That would be your four men?

THE WITNESS: Correct.

THE COURT: That would be 11:15?

THE WITNESS: About that time.

Q When you got to No. 4 hatch, you yourself, was that hatch covered with a hatch board?

A Yes.

Q Was it completely covered with the hatch board?

A Yes, it was.

Q Was there a tarpaulin?

A I don't remember.

Q Did you discharge -- I'm sorry.

Did the longshoremen in your gang uncover the No. 4 hatch square at that time?

A Yes.

Q That's when you got there?

A Yes, we did.

Q And how many longshoremen assisted in taking the hatchboards off the hatch square in No. 4?

A I don't actually remember.

Q Did you?

A It's four on my side, we did.

THE COURT: Your four did?

THE WITNESS: Yes.

THE COURT: You don't know if there were additional ones?

THE WITNESS: There could have been two more from the other side. I don't know.

Q The customary practice is for all the hold men to assist in this operation?

A That's correct.

Q Did you open up -- when I say "you" I mean

your gang -- the entire hatch square of No. 4 at that time?

A I don't remember.

Q Do you remember whether the longshoremen in your gang took the beams out of the hatch square No. 4?

A Yes; we did.

Q But you don't remember whether they took all of the hatchboards off?

A No, I don't remember.

Q The ones that you took off from what part of the hatch did you take them off, the forward part or the aft part?

THE COURT: Or any other part.

A I can't say now, but if I could see a diagram maybe I could show you, but I can't say just offhand.

Q In any event, you uncovered at least a portion of No. 4 upper hatch square, the one on the main deck level; is that right?

A Yes.

Q After you finished uncovering, or after your gang finished uncovering the hatch square of No. 4, did you -- speaking of you yourself -- then go down into No. 4 upper tween deck?

A Yes.

Q You did.

When you went down into the No. 4 tween deck, was there any cargo in No. 4 tween deck?

A No, there wasn't.

Q Were the hatch boards on the entire hatch? I'm talking now when you first went down there after you uncovered at least a portion of the hatch boards took them off in the No. 4 upper level. When you first went down there was the entire tween deck hatch square covered with hatch boards?

A Yes, it was.

Q Did you then remove the hatch boards from the tween deck square?

A Yes.

Q Did you yourself assist in removing those hatch boards of the tween deck?

A Yes.

Q And when you opened it up or took some hatch boards off the No. 4 tween deck hatch square, did you or did the longshoremen in your gang take them off the entire hatch square?

A I don't remember.

Q In any event, you took some off; is that right?

A Yes, we did.

THE COURT: At least some?

THE WITNESS: Yes.

Q When you uncovered the hatch square in the No. 4 tween deck, was there cargo in the No. 4 hold?

A Yes, there was.

Q Was the hold completely full of cargo, if you recall?

A Not completely.

Q What percentage of it would you estimate was loaded with cargo at the time you first unloaded that hatch square?

MR. KLONSKY: No. 2?

MR. KAIN: No. 4.

A All I know, there was a lot of hides down there. I don't know what percentage.

Q Was there any other type of cargo down there but hides?

A Only hides.

Q Could you tell me what the longshoremen in your gang used to discharge hides? What's the equipment that longshoremen use to discharge hides?

A Rope nets, the winch, and the equipment we use -- our personal equipment.

Q Well, let's take it step by step. What personal equipment do you use?

A Hook and gloves.

Q Do you wear any protective clothing?

A No.

Q You use hook in the discharging of hides, do you?

A Yes.

Q And you use gloves?

A Yes.

Q And that's the equipment the individual longshoreman owns himself?

A Yes.

Q Is that the only personal equipment that the longshoreman uses in discharging hides?

A Yes.

Q What ship equipment did you use in discharging hides?

A The boom, the ship's boom.

Q The ship's winches?

A Yes.

Q The ship's cargo hook?

A Yes.

THE COURT: What's a cargo hook?

THE WITNESS: That's where you hook up the bridles to hook up your pallets.

THE COURT: The bridles run from the hook to the four corners of the pallets?

THE WITNESS: Correct.

THE COURT: And the cargo hook gathers those four bridles into one?

THE WITNESS: Takes it right off to shore.

THE COURT: By this overhead cable.

Q Do you know, Mr. Rodriguez, on July 3, 1967 whether the cargo hooks used aboard the ships, were they ship's equipment for the stevedores?

A I wouldn't know.

Q How about the rope net you referred to, if you know, were they ship's equipment for the stevedores?

A I would say they were stevedore's.

Q Other than the booms, winches and nets, were there any other equipment other than the equipment that we have been discussing that was used in discharging these hides?

A No.

Q Incidentally, were these green hides, if you know?

A I don't know what you mean by "green hides."

Q Do you know if they were tanned leather or untanned?

A They were untanned leather.

Q And had you finished -- I am referring now to you specifically. Had you finished your work in uncovering this No. 4 tween deck hatch before you went to lunch that day?

A Yes.

Q Had any of these hides been discharged before you went to lunch?

A No.

Q Now, you told us yesterday, I believe, that the gangway or the gangplank, I think you called it, in leaving the ship was located where along the side of the ship?

A All I know on the side of the ship. I don't know where exactly.

(Continued on next page.)

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Q The side nearest the pier, the in shore side?

A Yes

Q Do you remember which hatch it was nearest to?

A I don't remember.

Q Do you remember whether it was forward of the bridge housing?

A I don't remember.

Q Is it a fair statement to say that all you remember is that it was on the shore side of the ship, the side next to the pier?

A That's right.

Q But you don't remember where along that side it was rigged; is that correct?

A Correct.

Q Incidentally, what time did you go to lunch?

A Twelve o'clock.

THE COURT: To lunch?

THE WITNESS: I went to lunch at twelve o'clock.

Q Before you left the ship to go to lunch, was there a whistle blown to indicate the lunch hour?

A There must have been.

Q When you went to lunch, did you go directly from No. 4 hatch off the ship?

A Yes, I did.

Q You didn't go to any other portion of the ship. You went directly from No. 4 to this gangway or gangplank as you referred to it and left the ship?

A Correct.

Q When did you thereafter return to the ship?

A One o'clock.

Q When you left the ship, did you take any personal gear ashore?

A No, I didn't.

Q When you returned to the ship, did you bring any personal gear back with you?

A No.

Q What time did you get -- approximately, what time did you get back on board the ship after lunch?

A Maybe about ten minutes after one or something.

Q Did the other longshoremen in your gang return to the ship at the same time as you did?

A Yes.

Q And near the end of the lunch hour, did the longshoremen collect on the pier and when a whistle was blown did all of the longshoremen start to the ship's

gangway to go back to work?

A Yes.

Q At that time, did you notice any other longshoremen coming up the ship's gangway other than the longshoremen in your gang?

A No.

Q When you came up this gangway, were there longshoremen in your gang ahead of you?

A YEs.

Q Were there some other longshoremen in yout gang behind you?

A Yes.

Q And when you came up to the top of this gangway you came out on the main deck of the ship -- the top deck of the ship?

A That's right.

Q Did you go directly from there to the No. 4 hatch of the ship?

A Yes; I did.

Q When you got to No. 4 hatch of the ship, was there any work then in progress in No. 4?

A No, there wasn't.

Q What were the longshoremen doing, were they going down into the No. 4 hold?

A Yes, they were.

Q Did you -- excuse me, did you go down to No. 4 hold.

A Not to the hold.

Q Where did you go?

A I went to the upper tween deck.

Q When you got to the upper tween deck, what did you do?

A I was talking -- speaking with my header.

Q Did you at any time before you spoke to your header speak to your hatch boss?

A I didn't see him at that lunch period. I was looking for him, but I didn't see him.

Q Did you look for him?

A Yes, I did.

Q When you came back to the ship, was he at No. 4 hatch?

A I didn't see him at all.

Q Did you look for him at No. 4 hatch?

A I didn't look for him, I just looked around.

Q Now, at the time you spoke to your header, that was Mr. Austin, was it?

A Yes.

Q Where was Mr. Austin when you spoke to him?

A He was on the upper tween deck ready to start down the ladder.

Q Almost ready to start down the ladder?

A That's right.

Q He was still in the tween deck, was he?

A Yes, he was.

MR. KAIN: Would Your Honor excuse me for a moment?

THE COURT: Yes.

(Pause.)

Q Mr. Rodriguez, do you recall testifying at an examination before trial on May 13, 1969 at my office?

A Yes.

Q And do you remember at that time testifying under oath you were asked certain questions and you gave certain answers?

A Yes, sir.

Q Do you recall being asked this question: Page 30, Line 5.

"Q Did you see him at all before you got back to the hold?

"Mr. Klonsky: May we stipulate the him referred to is Mr. Austin?

"A No, we had lunch. He lunches at one

place and I lunch at another place.

"Q Let me see if I understand you correctly. You first spoke to Sam Austin about your gloves and your hook after you got back to No. 4 hatch; is that correct?

"A Yes, sir."

Did you give those answers to those questions?

A Yes.

Q "Q At the time you spoke to Sam Austin, at what level of No. 4 hatch were you?"

Did you give this answer:

"A I had to go down to see him. He was down already in the lower deck down in the bottom."

Were you asked that question and did you give that answer?

A Yes, sir.

Q Were you asked this question:

"Q When you say the lower deck, do you mean all the way down in the hold?"

And did you give this answer:

"A All the way down?"

A Y es, sir.

Now I remember that's how it happened.

Q You mean you remember now that you were all the way down in the hold or you were on the tween deck?

A Now that you read it to me I remember.

Q I want you to tell me what you remember as you sit here right now. Do you remember whether you were already down in the hold when you spoke to Mr. Austin or were you on the tween deck?

A It's a long time back. I don't really remember exactly if I was there or down.

Q Well, is it a fair statement to say that you don't remember whether you first spoke to Mr. Austin -- you don't now remember where you spoke to him, in the lower hold or the tween deck?

A I know that Sam Austin was down in the hold before me. I think he was down in the hold.

THE COURT: The question was this: You could see him from the tween deck?

THE WITNESS: Yes, sir.

THE COURT: Some places you couldn't see him. A conversation could be carried on with your feet and his feet on one level or your feet on one level and his feet on the lower level.

THE WITNESS: We were together.

THE COURT: Do you know where your feet were?

THE WITNESS: We were together -- I'm in doubt whether it was in the lower hold. I just can't remember now.

THE COURT: Could have been?

THE WITNESS: Could have been.

THE COURT: And he also could have been on the tween deck?

THE WITNESS: I don't remember at this time.

Q Let me ask you this, Mr. Rodriguez:

Do you remember after you obtained permission from Mr. Austin to get your hook and your gloves, did you climb a ladder?

A Yes, I did.

Q And do you remember which ladder you climbed?

A I don't remember.

Q Do you remember where it led from?

THE COURT: From what deck to what deck?

A From the lower hold.

THE COURT: To where?

THE WITNESS: To the next deck up. I don't remember which deck that was.

THE COURT: You had a tween deck, didn't you?

THE WITNESS: Yes. I guess it was -- one

ladder leads to the tween deck and there is another one that goes up.

THE COURT: Up to where?

THE WITNESS: The next deck.

THE COURT: What is the next deck?

THE WITNESS: The lower tween deck, I guess that was.

Q Do you remember how many tween decks there were in No. 4 of the Sonny Prince on July 3rd?

A I don't remember.

THE COURT: These ladders that were on the ship, are they continuous ladders or do they break and have a landing at the different decks?

THE WITNESS: They break.

THE COURT: Do you remember how many ladders you climbed?

THE WITNESS: No, I don't remember.

THE COURT: But you did climb at least one ladder?

THE WITNESS: I remember -- yes, I did.

Q Do you have a recollection of climbing a ladder after you spoke to Mr. Austin?

A Yes.

Q If you recall, did this ladder that you climbed have more than one deck level?

A I don't remember. I don't remember if it was one deck or two.

Q Let me ask you this:

After you spoke to Mr. Austin, did you thereafter return to the very top deck?

A No, I didn't.

Q When you spoke to Mr. Austin, you told him that you left your hook and your gloves in No. 2 hatch?

A That's right.

Q Did Mr. Austin ask you why you had left your hook and gloves?

A No, he didn't.

Q Did you give him any reasons?

A No, I didn't.

Q He just told you to go get them; is that right?

A Correct.

Q What did you do then?

A I remember climbing the ladder and I was on a deck -- one deck up from the main deck --

Q Up from or down from?

A Well, I was down inside the hold. I am talking about one deck up is the main.

Q You are indicating that you are one deck below the main deck?

A That's right.

Q What did you do when you climbed the ladder to one deck below the main deck?

A I was ready to climb the ladder to the main deck to go and get my gloves.

THE COURT: What did you do? Did you climb to the main deck?

THE WITNESS: No, I didn't.

THE COURT: What did you do?

THE WITNESS: Well, I saw a doorway there and I went in through to get my hook and gloves.

Q Now, Mr. Rodriguez, when you climbed this ladder to one deck below the main deck, was that the ladder in the No. 4 hatch?

A Yes, sir.

Q And do you recall was it at the forward end or the aft end of No. 4 hatch?

A It was in the aft end.

THE COURT: Aft end of what?

THE WITNESS: Of the hatch of No. 4.

Q When you got -- you climbed this ladder at the aft end of the hatch. You referred to a point where you are on the tween deck, one deck below the main deck in No. 4 hatch.

A Yes.

Q At the aft end?

A Yes.

Q At that time you noticed a door?

A Yes.

Q Could you tell me where that door was located? That you noticed at that time?

A On the off shore side.

Q At the forward end of the hatch?

A The aft end of the hatch.

Q The aft end.

When I say the forward end, I mean the front of the hatch.

A I have to have a diagram, because I can't picture this in my mind.

MR. KAIN: If there is no objection --

THE COURT: I want the jury to see where he points to as he testifies.

MR. KAIN: Shall we put it on the board?

THE COURT: Yes, that is why the board is being moved out. You could move it in back

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of Mr. Klonsky. We will have the witness leave the witness stand.

MR. KAIN: It rather effectively blocks out Mr. Cohen and Mr. Wolf.

THE COURT: That is what I had in mind.

Maybe we can move it back to where you had it yesterday and we will be able to see it from there.

MR. COHEN: That is all right with us.

THE COURT: You can take any position where you can see it. I prefer to have the witness remain on the witness stand so he and the jury may look at the map -- maybe we ought to move it in back and we will have him leave the stand.

Mr. Kain, suppose you question from the other lectern.

Let the record indicate the witness leaves the stand.

If you gentlemen want to take a position in frontof the map -- in front of the diagram rather, you can sit at the forward end of Mr. Klonsky's table if you wish.

MR. WOLF: Thank you.

Q I think there is a pointer there if it will assist you in indicating on that plan. Using the plan, Mr. Rodriguez, and I am directing your attention to the No. 4 hatch on the plan. Do you find it there?

THE COURT: Are you saying anything? The witness is pointing. Is it so marked?

THE WITNESS: Yes, it is.

THE COURT: Is that the No. 4 hatch, Mr. Klonsky?

MR. KLONSKY: Yes.

Is he supposed to point where it is?

MR. KAIN: I just asked him if he could locate it.

THE COURT: Is there a No. 4 there?

THE WITNESS: Yes.

MR. KAIN: It's marked.

Q You told us that you came up the ladder at the aft end of that hatch. Would you point with the pointer where the aft end of No. 4 hatch is?

A Here is where I came (indicating).

MR. KLONSKY: He is pointing to the forward end.

THE COURT: Where is the forward end of the ship?

THE WITNESS: When I came up this ship was one way, but this is a different way. This is the front and this is the back and this is where I came up (indicating).

THE COURT: You are pointing to a ladder at the forward end of hatch No. 4. You are correcting or changing the testimony that you gave before when you said it was at the aft end.

Q Did you notice, Mr. Rodriguez, when you looked at No. 4 hatch it indicated there was one tween deck and one hold, not two tween decks?

A Yes.

Q So did you come up a ladder at the forward end of No. 4 hold that brought you out -- when you got to the top you were then in the forward end of No. 4 tween deck; is that correct?

A That's correct. I came up from here on to this ladder here (indicating).

THE COURT: You climbed one ladder to the tween deck and there is only one tween deck there and not two?

THE WITNESS: I just climbed the ladder up.

Q And it's your recollection now that that was at the forward end of No. 4 hold, the ladder that you

climbed?

A Yes, it is.

Q And when you got to the tween deck, what did you do then? Did you continue on to the main deck or did you stop at the tween deck level?

A I stopped.

Q What did you do then?

A Before I started upon the ladder the winches were coming over and I just stood on the ladder -- not on the ladder, on the deck, letting the fork come down and then I stopped at a door.

Q At the time you climbed the ladder, were they discharging cargo?

A No.

Q Was the cargo hook coming down into the hold at that time?

A It was coming overhead.

Q Coming overhead?

A Yes.

Q Did it have any load on it or was it just an empty hook?

A I can't remember now.

Q What did you do then?

A Well, as I saw the hook coming down I just waited and

then I spotted the door and I pushed the door in.

THE COURT: And you pushed the door in. Go back to the stand.

(Witness returns to stand.)

Q This door that you spotted, Mr. Rodriguez, did you tell me just a minute ago it was on the offshore side?

A Yes, sir.

Q Could you describe the door for me? What type of door was it?

A It was a metal door and I pushed it in.

Q Was it a solid door?

A It was solid metal.

Q It wasn't in strips, it was one solid piece of metal?

A Just one strip of metal.

Q Just one solid piece --

A Yes.

Q -- is that right?

A Yes, sir.

THE COURT: Keep your voice up.

Q Was there a door on the inshore side in the same place on the ship?

A I don't know.

Q You didn't notice any, in any event, on the inshore side; is that correct?

A No.

Q Was there -- you say you pushed this door open?

A I don't remember. I guess I pushed it in.

Q Do you remember whether it was opened or closed at the time you got there?

A It wasn't open and it wasn't closed. There was a space in between.

Q You mean the door was ajar, it was partly opened?

A Yes, sir.

Q Did you have to do anything in order to pass through the doorway? Did you push it to open it?

A YEs, I did.

THE COURT: You pushed it fully open?

THE WITNESS: I just pushed it open and went through.

Q Was this the first time in your life that you had ever been on this ship?

A Yes, it was.

Q And this was the first time you had been in No. 4 hold that day -- No. 4 hatch?

A Yes.

Q At the time you saw this door, did you know where the door led to?

A Well, I was in the same level deck as I worked in the morning.

Q You worked on a great many ships, haven't you, Mr. Rodriguez, in the year and a half you were a longshoreman or two years, approximately, that you were a longshoreman?

A Yes.

Q Have you -- have all the ships that you worked on had unobstructed passageways or spaces all the way through -- could you walk from one end of the ship to the bow?

A Some of them.

Q In some of them?

A YEs.

Q Were there others that you could not?

A Others didn't have a passageway.

Q Well, there were ships that you worked on where there were transverse bulkheads -- do you know what I mean?

A No.

Q I mean a wall going from one side of the

ship to the other that prevents you from walking forward.

A On some ships, yes.

Q At the time you went through this door, did you know whether there was clear cargo space all the way from No. 4 hatch to No. 2 hatch?

A When I opened the door and I flashed the light, there was no cargo there.

Q At the time you passed through this door, did you know at that time whether there was unobstructed space?

In other words, whether you could pass forward all the way from No. 4 to No. 2?

A Well, I knew it from previous experience.

Q Not on this ship?

A Not on this ship.

Q You told me just a minute ago -- at least that's what I understood you to have told me. Let me ask you again.

Some of the ships that you had previously worked on you could not walk forward from No. 4 to No. 2 because there were bulkheads or obstructions intervening or between No. 4 and No. 2; is that correct?

A That's correct.

Q So that at the time you went through this

door, at the forward end of No. 4 hatch, you didn't know whether the space between that door and No. 2 hatch was unobstructed? You didn't know whether you could pass through to No. 2, did you?

A No, I didn't.

THE COURT: Would that area be an area in which cargo might be placed?

THE WITNESS: No. Other times I passed through ships, I just walked through. You don't have to walk up --

THE COURT: No, on this particular ship was that an area for cargo as well?

THE WITNESS: I don't think it was for cargo.

THE COURT: You say "passageway", but you never have stated what you mean by the term "passageway".

THE WITNESS: Well, there is a door and behind the door there was about so much space like this (indicating).

THE COURT: Indicating how much space from side to side?

THE WITNESS: From here to there. I don't know how much space.

THE COURT: About five feet wide?

THE WITNESS: Yes.

THE COURT: At the end of the space, was there anything there? Was it open or was there a wall or what?

THE WITNESS: I just walked in a straight pattern.

THE COURT: You used the word "passageway" and I want to know what it means.

THE WITNESS: That's where I walked through. Just a straight path.

THE COURT: Could you see what was immediately on the other side of the door that you pushed open?

THE WITNESS: Immediately?

THE COURT: Yes.

THE WITNESS: The floor that I walked on.

THE COURT: The first step that you took through the door, could you see the passageway? Could you see what it looked like?

THE WITNESS: Just a steel deck with some wood on it.

THE COURT: On the floor?

THE WITNESS: Yes.

THE COURT: How about the sides and ceiling?

THE WITNESS: I just walked straight.

THE COURT: You didn't see the sides or the ceiling.

Actually, as far as you knew it was a pathway? It wasn't a passageway that was closed?

THE WITNESS: That's right.

Q Mr. Rodriguez, do you know whether the are into which you stepped -- the instant you stepped through this door, which you described was in fact cargo space --

A No, I didn't know.

Q You didn't know whether it was or was not?

A That's correct.

Q As you sit on the stand today, do you know whether it was or was not cargo space?

A No, I don't.

Q When you pushed through this door, was the door closed anyway behind you?

A I do not remember.

Q As you passed through the door and you came into the area immediately on the other side of it, was it dark?

A Yes, it was.

Q Was it very dark?

A It was dark.

Q Very dark?

A Yes, it was.

Q At the time you went through the door, had you taken this flashlight we were talking about theother day off your key ring?

A Yes, sir.

Q What did you have to do to take it off your key ring, how was it attached?

A It was a little chain, just clip it off and take it off.

Q Was the chain similar to the chain on the flashlight that I showed you yesterday?

A Yes.

Q This little chain?

A Yes.

Q The same type?

A Yes.

Q You had to snap out a link and open it up?

A Yes.

Q Did you take this flashlight out before you passed through the door?

A I had it in my hand before.

Q You had it in your hand as you passed through the door?

A Yes.

Q At the time you passed through the door, did you see anybody else? Were there any other men there?

THE COURT: In the passageway you mean?

MR. KAIN: In the area of the door.

THE COURT: Either from where you were coming from or to where you were going.

THE WITNESS: Could have been. I don't remember.

MR. KAIN: May I have just a moment, Your Honor?

THE COURT: Yes.

(Pause.)

Q This deposition at my office that I previously referred to where you testified under oath. On page 31, line 23 were you asked this question:

"Q Then what did you do?"

And did you give this answer:

"A I stopped there and when I was going to start up I saw the door. I saw a door there and there was some men there, they were maintenance men and

I walked over to the door.

"Q Is that on the forward or the aft end of the hatch?

"A The forward."

Do you remember being asked those questions and giving those answers?

A Yes, sir.

Q So does that refresh your recollection now that there were some men in the vicinity as you walked through the door?

A Yes, sir.

THE COURT: What do you mean by "maintenance men?"

THE WITNESS: I guess, ship cleaners, not longshoremen.

THE COURT: Keep your voice up.

Q Did you say anything to any of those men as you went through the door?

A They asked me something.

THE COURT: Did you say anything?

THE WITNESS: Well, I replied to them.

THE COURT: All right, the answer is "Yes."

Q Did you tell them where you were going?

A I told one fellow where I was going.

Q Just one of these maintenance men?

A Yes.

Q Now, when you passed through this doorway you say you came into a dark area?

A Yes.

Q Was your flashlight -- the small flashlight working that you had at the time?

A Yes.

Q Could you see where you were going?

A Fairly good.

Q Could you tell us what was on either side of you?

A I didn't look for either side, I was just shining where I was stepping.

Q Are you indicating as you walked along you put the flashlight down towards your feet?

A No, quite a distance as I was walking straight. I had it straight. There was no objects in front of me.

THE COURT: In other words, the beam that you were flashing, you indicate was parallel with the ground?

THE WITNESS: Yes, kind of. So that I wouldn't bump into anything.

THE COURT: I do not want to know the reason.

Just describe your hand.

He indicates with his hand held horizontal.

Q Did you point the flashlight down to the deck at all or just walked with it pointing forward?

A At times I did and at times I didn't.

Q Did you look around?

A No.

Q Sometimes you shined down and sometimes you didn't?

A Yes.

Q Could you see well with this flashlight that you were using?

A Yes.

Q You could see well?

A Fairly good.

MR. KAIN: Would Your Honor bear with me for a moment?

THE COURT: Yes.

(Pause.)

Q Without the flashlight, could you see in this passageway?

A I guess not.

THE COURT: In other words, there was no

light there except the light from your flash?

THE WITNESS: That's correct.

THE COURT: And the space you were coming from, the hatch, how was the light there?

THE WITNESS: It was good.

THE COURT: What kind of light was it?

THE WITNESS: Just the light of the day.

THE COURT: The sunlight?

THE WITNESS: From the No. 4 hatch.

THE COURT: From the open square of the hatch?

THE WITNESS: Yes.

THE COURT: There was no artificial light?

THE WITNESS: No, there wasn't.

Q Now, Mr. Rodriguez, as you walked forward from No. 4 hatch, what was in the area immediately forward of No. 4 hatch?

A There was nothing there.

Q Were there any stanchions?

Do you know what I mean?

A No.

Q Were there any ventilation pipes or anything of that sort in that area?

THE COURT: What is your answer?

A I don't know.

Q Did you see any?

A No.

Q Were there any objects of any kind on the deck on which you were walking in this area? That's in the forward end of No. 4 to the aft end of No. 3?

A I don't remember.

Q Do you remember whether the deck on which you were walking was uncluttered, was there anything on it?

A I don't remember.

Q When you came into No. 3 hatch, this area here --

THE COURT: Indicating the exhibit. What is that exhibit number?

MR. KAIN: Plaintiff's Exhibit 3.

THE COURT: That is correct, Your Honor.

THE COURT: Before you continue with your questioning, in view of the preceeding question, you have been asked is there anything from the forward end of 4 to the aft end of hatch No. 3. Were there any lines there to indicate when you reached the hatch?

THE WITNESS: No.

THE COURT: But how did you know you were in Hatch No. 3?

THE WITNESS: Because in hatch No. 3 there was a similar doorway.

THE COURT: Hatch No. 3. You are being asked about hatch No. 3. You left hatch No. 4. How did you know it was hatch No. 3?

THE WITNESS: As soon as you walk from hatch No. 3 to the other side and you step in there there is a doorway there.

THE COURT: You left hatch No. 4.

THE WITNESS: Correct.

THE COURT: You walked the distance. How many feet you were not asked. Then when you came to the aft end of hatch No. 3, you continued walking. How did you know that you hadreached hatch No. 3?

THE WITNESS: I didn't know that I'd reached No. 3.

THE COURT: The question had hatch No. 3 in it.

MR. KLONSKY: As soon as the door was opened he was --

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Alexander & Edmunds Clerk
atty for appellant-